Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

LAUREN J. PAULSON,

Petitioner,

v.

OREGON STATE BAR and
THE SUPREME COURT OF OREGON,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Oregon

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is it a denial of due process under the Fifth and Fourteenth Amendments to the United States Constitution if, in attorney disciplinary matters, the rules of the Oregon State Bar (OSB) provide for the prosecuting attorney to also formally serve as "Counsel" to the disciplinary Grand Jury *and* also allow that prosecutor to participate in the selection of the attorney trial panel judges? These Oregon State Bar Rules preclude ethical complaints against the prosecutor by requiring the Chair of the Grand Jury to investigate ethical complaints against their own attorney, the prosecuting attorney, their designated attorney under these Bar Rules. This allows the prosecutor to engage in reprisal which occurred here, insulated from claims of prosecutorial misconduct.

PARTIES

Lauren Paulson is an attorney in Aloha, Oregon and a Member of the Bar since 1973. He has served as the President of the Washington County Bar Association in 1996 and was elected to the Oregon State Bar Board of Governors in 2002.

Karen Garst is the Executive Director of the Oregon State Bar and is not a lawyer.

Jeff Sapiro has been employed by the Oregon State Bar since 1981 and has been the Disciplinary Counsel (prosecutor) for the Oregon State Bar since 1988. Stacy Hankin is an Assistant Disciplinary Counsel with the OSB. Susan Hoebach is a former prosecutor with the Washington County District Attorney's office and is a volunteer Bar Counsel for the OSB.

The Oregon State Bar is a public corporation, a political subdivision and agency of the State of Oregon and an instrumentality of the Oregon Supreme Court.

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OPINION BELOW

The Oregon Supreme Court rendered its written Opinion in this lawyer disciplinary case on October 19, 2006 (**APP 1**). That Opinion upheld the trial panel opinion dated December 27, 2005 (**APP 7**).

COMPANION CASES

1. Paulson has just filed a Petition for a Writ of Certiorari in this Court on November 13, 2006 in Case #06-675 *Lauren Paulson v. Oregon State Bar and The Supreme Court of Oregon.* (Also referred to hereinafter as the *Gensman* case. Mr. Gensman was the complaining party and the Defendant in the underlying case (*Nutt v. Gensman, et al.*) that lead to the disciplinary case).

2. Following Paulson's removal from the Oregon State Bar's Board of Governors (BOG) in October, 2004 due to the new Bylaw 18.6 (which suspended a BOG member if there was a formal disciplinary complaint pending against that person. This "new" rule suspended Paulson from service on BOG) he filed a complaint in Oregon Federal District Court alleging, *inter alia,* violations of civil rights and bill of attainder in *Paulson v. Carter, et al.* (Carter) Case #CV04-1501KI. That matter is on appeal in the Ninth Circuit (Case #06-35260).

All these matters are in reprisal for Paulson's participation along with local lawyers in their united efforts to reform Oregon's punitive bar disciplinary system. (See memo from Mark Zusman on that subject dated July 15, 2005. Mr. Zusman is the Trial Panel Chair in the *Gensman* case – Companion Case #1) (**APP 26**). They also arise out of

Paulson's blowing the whistle on Karen Garst's efforts to get the OSB to purchase a defunct church building where she was a congregant and a creditor.

JURISDICTION

This Petition for a Writ of Certiorari is filed within 90 days after entry of the state court of last resort's judgment dated October 19, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

FEDERAL QUESTION INVOLVED

The federal question involved in this case is the "due process" clause of the Fifth and the Fourteenth Amendments to the United States Constitution which precludes a state from depriving any person of life, liberty, or property without due process of law.

In the *Dascher* case, the Oregon Supreme Court has tacked on four more months of suspension of Paulson's right to practice law to the Companion Case #06-675 cited above, which provides that no State should "deprive any person of life, liberty, or property without due process of law."

STATEMENT OF FACTS

In the Companion Case #1 (*Gensman*) recited above, Paulson filed a bar complaint against Jeff Sapiro on November 13, 2001 for his three year delay in investigating the

matter (**APP 96**). The *Dascher* case was filed by OSB to keep Paulson off of BOG.

In Oregon there are four sets of rules that govern in this case: the Oregon State Bar Bylaws (Bylaws), the Oregon State Bar Rules of Procedure (BR's), the Oregon Revised Statutes (ORS), and the Oregon Constitution.

1. *The Grand Jury* – Under Oregon State Bar Bylaws, Jeff Sapiro is formally designated as the attorney for the grand jury (Bylaw 18.100). (**APP 94**) In Oregon the attorney disciplinary grand jury is called the State Professional Responsibility Board (SPRB). The OSB Bylaws state:

> **Article 18 – Discipline**
>
> **Section 18.1 – State Professional Responsibility Board**
>
> **Subsection 18.100**
>
> * * *
>
> "The SPRB will receive the counsel and advice of the Office of Disciplinary Counsel of the Bar. . . ."

This means that Jeff Sapiro, Disciplinary Counsel and prosecutor of Oregon attorney disciplinary complaints is also the attorney for the State Professional Responsibility Board which is the grand jury for attorney disciplinary complaints. Under this bylaw, Jeff Sapiro regards himself as the attorney for Oregon's grand jury for disciplinary matters. In his deposition taken in 2005 in the Companion Case #2 above Mr. Sapiro stated "We are their (the SPRB's) lawyers." (**APP 108**) Unfortunately, Mr. Sapiro does not advise the SPRB chair that he is not still their lawyer when the grand jury chair has to investigate him. (**APP 109**)

In Oregon grand juries are governed by the Oregon legislative assembly. (See Amended Constitution of Oregon, Art. VII § 5). The Oregon State Bar's legislature is the House of Delegates. (See generally ORS 9.136 through 9.155 and OSB Bylaw Article 3 et seq.). There is no law in Oregon allowing prosecutors to be the lawyer for grand juries.

Once Paulson filed the disciplinary complaint against Mr. Sapiro for his three year delay in the investigation of the *Gensman* case, it was referred to James R. Uerlings, Chairman of the State Professional Liability Board pursuant to Oregon State Bar Rule of Procedure 2.6. This rules states:

> **Rule 2.6 Investigations**
>
> "(g) Investigation of Complaints Against Disciplinary Counsel, General Counsel or other Bar agents. Complaints of misconduct concerning disciplinary counsel . . . of the Oregon State Bar . . . , shall be referred to the chairperson of the State Professional Responsibility Board (for investigation)."

The SPRB Chair has the sole discretion to dismiss the complaint or investigate the complaint further under this rule. Mr. Uerlings dismissed Paulson's complaint against Mr. Sapiro, in the *Gensman* case, a month after the complaint was made and without an investigation. (**APP 98**)

So, it can be seen that Mr. Sapiro has at least two hats, the prosecuting attorney in lawyer disciplinary cases in Oregon and he is the attorney for the grand jury in lawyer disciplinary cases and attends every grand jury session in that role even though another assistant disciplinary counsel may be handling the case.

2. *Disciplinary Board* – Mr. Sapiro takes on yet another brim when handling attorney disciplinary cases. Under the Oregon Revised Statutes it is the Oregon Supreme Court which "shall" appoint the attorney disciplinary judges. In Oregon those judges are called the Disciplinary Board. Oregon Revised Statute 9.534 states:

> **"9.534 Disciplinary board . . .**
>
> (1) The Supreme Court shall appoint a disciplinary board to hear formal charges against members of the bar."

However, in Oregon it is the Oregon State Bar Board of Governors (BOG) Appointments Committee which makes the actual choices for the disciplinary board. (**APP 92**) When Paulson was elected to the Oregon State Bar Board of Governors for his term commencing 2003, he was placed on the BOG Appointments Committee and observed first hand Mr. Sapiro's active involvement. The Oregon State Bar has confirmed Mr. Sapiro's attendance at these meetings. In her letter dated May 2, 2006, OSB assistant disciplinary counsel Stacy Hankin states: " . . . (Mr. Paulson) is correct that Disciplinary Counsel Jeffrey Sapiro was in attendance at the October 1, 2005, meeting when the Board of Governors considered the 2006 list of nominees for the Disciplinary Board." (**APP 92**)

Judges in Oregon are either appointed by the governor or elected. (See, generally the Oregon Constitution at Article VII). There is no provision in Oregon law for District Attorneys to participate in the appointment of judges with the Governor of Oregon.

REASONS FOR GRANTING THE PETITION

It denies Oregon lawyers due process when the Oregon State Bar insulates its prosecuting attorney from investigation of prosecutorial misconduct and unethical conduct by confining those investigations to the chair of the grand jury for which that prosecutor, by rule, also serves as " ... their lawyer," namely the prosecutor is also counsel to the grand jury. This leaves the prosecutor able to engage in unfettered reprisal which he is doing here. Finally, this prosecutor attends the meetings where the attorney disciplinary judges are selected for appointment. Accused lawyers do not participate in this selection nor do they know the prosecutor plays a role in selecting the judges for attorney discipline.

DISCUSSION

By 2001, the *Gensman* case had been pending against Paulson without formal charges nor an investigation for three years. Paulson got fed up with this delay and made a bar complaint against Mr. Sapiro in November, 2001. Mr. Sapiro's client, the Chair of the SPRB, dismissed Paulson's complaint against Mr. Sapiro in December of 2001 without investigation. (**APP 98**) However, something more pernicious happened. All of Mr. Paulson's bar complaint problems occurred thereafter including this case. A chart of this scenario is provided at (**APP 60**). Paulson has raised this issue of prosecutorial misconduct in each of the Companion Cases including this one. Unfettered, Mr. Sapiro has filed two more disciplinary complaints against Mr. Paulson which are scheduled for trial this month (January, 2006).

As a general proposition prosecuting attorneys are immune from liability under civil rights laws and specifically suits under 42 U.S.C. § 1983. The United States Supreme Court has specifically held that prosecutors *are not* immune from ethical misconduct.

> "* * * [T]he immunity of prosecutors from liability suits under § 1983 does not leave the public powerless to deter misconduct or to punish that which occurs.
>
> * * * Moreover, a prosecutor stands perhaps unique, among officials whose acts could deprive persons of constitutional rights, in his (sic) amenability to professional discipline by an association of his (sic) peers. *Imbler v. Pachtman*, 424 U.S. 409, 428-29, 96 S. Ct. 984, 994, 47 L. Ed. 2d. 128 (1976).

The Oregon Supreme Court, in applying this rule, has specifically held that prosecutors are not immune from prosecutorial misconduct proceedings against them for their unethical conduct. *In re Rook*, 276 Or. 695, 556 P.2d 1351 (1976), the Oregon Supreme Court specifically held a local district attorney was answerable for unethical conduct. (**APP 113**) The district attorney, Roger Rook, had offered one defendant in a gambling charge a plea agreement, but refused to make the same offer to fifteen other defendants similarly situated because he had personal animus against the latter's attorneys. The Oregon Supreme Court held that the conduct was "prejudicial to the administration of justice," within the intended meaning of DR 1-102(A)(5). Here, Jeff Sapiro, the OSB Disciplinary Counsel can only be investigated by his client, the SPRB, for unethical conduct. That puts his client in a clear conflict of interest situation of which there is no recourse.

No client is likely to "investigate" their own lawyer, nor should they be put in the position where they would have to do so. This procedure violates the rule *In re Rook* by insulating the prosecutor from his own unethical conduct as it has done in these cases. The unethical conduct of Mr. Rook was not investigated by his client, the State of Oregon, and one would hardly expect any client to be put in the position of investigating their own lawyer for prosecutable ethical violations. Oregon State Board Bylaw 18.100 (anointing Disciplinary Counsel the attorney for the grand jury) and Oregon State Bar Rule of Procedure 2.5(g) (requiring complaints against Disciplinary Counsel to be investigated by the Chair of the grand jury) combined violate due process of law of the members of the Oregon State Bar under the Fifth and Fourteenth Amendments to the United States Constitution because those rules insulate Disciplinary Counsel from claims of or actual prosecutorial misconduct. Paulson has consistently made those claims in all three of these cases. Each forum (i.e., the trial panels, the Oregon Federal District Court, and the Supreme Court of Oregon) has refused to entertain these articulated claims by Paulson of prosecutorial misconduct in violation of due process requirements stated above.

The question as to whether there is personal animus by Mr. Sapiro and Ms. Garst against Mr. Paulson is patent. Mr. Sapiro reports to Karen Garst, the Executive Director of the Oregon State Bar. Paulson has blown the whistle in May, 2004 on Ms. Garst's attempt to engineer a purchase by the Bar of her 10 million dollar church property where she was a congregant and a creditor of over $22,000. The Court may take judicial notice of Case #05-CR-132 in Oregon Federal District Court and Case #0504-03509 in Multnomah County Circuit Court where the husband of

the minister of this church pled guilty to laundering $10 million of his congregant's money. Ms. Garst made it clear that she wants a special investigator put on Paulson. (**APP 95**) Following her wishes, Mr. Sapiro put a special investigator on Paulson in the *Dascher* case and the two subsequent cases now pending.

Timing – The *Imbler* case points out that the prosecutor has uniquely more power to deprive persons of their constitutional rights. First, Mr. Sapiro files the *Gensman* case against Mr. Paulson on the same day Paulson is sworn into the Oregon State Bar Board of Governors in 2002. Second, following the new BOG rule 18.6 (See Companion Case #2) which suspended Paulson from BOG due to the pendency of the *Gensman* case, Mr. Sapiro arranges for the formal complaint to be filed against Paulson in the *Dascher* case in May, 2005 to be sure Paulson's removal from BOG continued because the *Gensman* decision was rendered in April, 2005. If Paulson had accepted the *Gensman* trial panel decision, Paulson would have returned to BOG in June of 2005. Mr. Sapiro's filing of the *Dascher* case in May, 2005 ensured Paulson could not be reinstated to BOG in June of 2005 and further insured that Paulson would no longer serve on BOG until his term expired in December, 2006.

What constitutional rights are at stake? Paulson commenced a BOG newsletter in February, 2003 to the lawyers in his Region which elected him. William Carter was President-elect of the OSB and regarded this newsletter as a danger to the good order of the Bar for some reason and thereafter Ms. Garst and Mr. Carter sought to remove Mr. Paulson from BOG and to stop the newsletter. (**APP 100**) Ms. Garst wrote a memo on January 13, 2004 to have a special investigator look into "Lauren's" cases. (**APP 95**)

Lynn Rey-Bode became that investigator and was the investigator in the *Dascher* case. (Funny none of the Court decisions or the Oregon Supreme Court decisions mention this memo).

As in *Gensman*, the Supreme Court of Oregon's decision in *Dascher* does not mention the other evidentiary rulings of the Trial Panel or otherwise demonstrate anybody on the Supreme Court of Oregon read or reviewed the entire record in their statutory de novo review. This notwithstanding that Paulson had made several pretrial motions and the Trial Panel had excluded many of Paulson's exhibits in *Dascher*. The same omissions by the Supreme Court of Oregon occurred in *Gensman*; they neither read nor reviewed the record. As mentioned in Companion Case #1 above, due process includes the right of the party whose rights are sought to be affected ***to introduce evidence and have judicial findings based upon it***. *Baltimore & O.R. Co. v. United States,* 298 U.S. 349, 80 L. Ed. 1209, 56 S. Ct. 797 (1936). In *Dascher* the Trial Panel Opinion excluded Paulson's exhibits 111, 112, 115, 116, 117, 118, 119, 120, 121, 122 and denied Paulson's Motion to Strike. (**APP 7**) The Supreme Court of Oregon does not mention these rulings nor do they discuss the propriety of the excluded exhibits as they are required to do on de novo review. *Roberts v. Mariner*, 195 Or. 311, 348, 245 P.2d 927, 943 (1952). There is no hearing in the constitutional sense where a party does not know what evidence is considered by the court and is not given an opportunity to test, explain or refute that evidence. *Interstate Commerce Com. v. Louisville & N.R.A.*, 227 U.S. 88, 57 L. Ed. 431, 33 S. Ct. 185 (1913).

Here, as in *Gensman* the Supreme Court of Oregon has failed to follow Oregon law which requires, on de novo review, that the entire case be reviewed anew, upon the

record in the fullest sense, *including the evidentiary rulings. Hannan v. Good Samaritan Hospital*, 4 Or. App. 178, 471 P.2d 831, 835 (1970). Again, the Supreme Court of Oregon has not done that here which denies Paulson due process.

Something even more egregious has occurred here. The Oregon State Bar staff (Karen Garst) will not allow the OSB BOG to meet without a staff member present. The Oregon State Bar has its own police force – the Disciplinary department. The Oregon State Bar has rigged the rules so the prosecutor can "counsel" the grand jury on who to charge and who not to charge. The prosecutor also attends the meetings where the disciplinary judges are selected. Finally, the rules are rigged so there can be no meaningful determination of prosecutorial misconduct. How did they get these rules past the membership? By eliminating or diminishing those that dissent like Paulson.

CONCLUSION

It is only the Supreme Court of the United States that can attenuate between the wrongs of the Oregon State Bar and the lonely voice of dissent. The Supreme Court of Oregon has gone missing. If the Bar can pick off a Paulson, then the chilling effect this message has on the rest of the membership will be heard loud and clear. This Court should grant the Petition for a Writ of Certiorari and reverse the decision of the Oregon Supreme Court dated October 19, 2006 along with the Companion Case #1 above.

Respectfully submitted,

LAUREN PAULSON, OSB #73232

Filed: OCTOBER 19, 2006

IN THE SUPREME COURT OF
THE STATE OF OREGON

In Re Complaint as to the Conduct of

LAUREN PAULSON,

Accused.

(OSB No. 04-26; SC S53185)

On review of the decision of a trial panel of the Disciplinary Board.

Argued and submitted September 6, 2006.

Lauren Paulson, Aloha, argued the cause and filed the brief for himself.

Stacy J. Hankin, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before De Muniz, Chief Justice, and Gillette, Durham, Riggs,* Balmer, and Kistler, Justices.**

PER CURIAM

The accused is suspended from the practice of law for a period of four months, with the period of suspension to run consecutively to the period of suspension imposed on the accused *Paulson II*.

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* Riggs, J., retired September 30, 2006, and did not participate in the decision of this case.

** Carson and Walters, JJ., did not participate in the consideration or decision of this case.

PER CURIAM

In this lawyer disciplinary proceeding, the Oregon State Bar charged the accused with violating Oregon Code of Professional Responsibility Disciplinary Rules (DR) 7-104(A)(1) (knowingly contacting a represented person on a subject directly related to the representation); 4-101(B)(1) (knowingly revealing client secrets); 4-101(B)(2) (knowingly using client secrets to disadvantage of client); and 1-103(C) (failing to cooperate with disciplinary investigation).[1] A trial panel of the Disciplinary Board found that the accused had violated each of those rules and suspended him for four months. We affirm the trial panel's decision.

This case arises in an unusual posture, On review, the accused does not challenge either the trial panel's findings that he violated the disciplinary rules or the sanction that the trial panel imposed for those violations.[2] The Bar also does not challenge either the trial panel's findings or the sanction. Given that procedural posture, we do not believe that an extended discussion of either the facts or the sanction would benefit bench or bar. We summarize our findings instead.

We find by clear and convincing evidence, as the trial panel did, that the accused violated four disciplinary rules. Specifically, we find that the accused met with his client,

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[1] The Oregon Rules of Professional Conduct became effective January 1, 2005. Because the conduct at issue in this case occurred before that date, we apply the Oregon Code of Professional Responsibility.

[2] The accused does raise certain matters that he characterizes as "affirmative defenses" and certain procedural objections. We address those matters later in this opinion.

Dascher, and a former client, Wiren, regarding claims that Wiren had sexually abused Dascher's daughter. The accused knew, when he met with Dascher and Wiren, that another lawyer represented Wiren on the sexual abuse charges and that Wiren's lawyer had not consented to the meeting. The accused's conduct violated DR 7-104(A)(1), which prohibits knowingly contacting a represented person on a subject directly related to the representation.

Later, at a hearing where the accused was representing Dascher, he knowingly revealed a secret regarding his former client, Wiren, in violation of DR 4-101(B)(1), and he knowingly used that information to Wiren's disadvantage in violation of DR 4-101(B)(2). Finally, when the Bar investigated the accused regarding those charges, the accused repeatedly failed to comply with the Bar's reasonable requests for information in violation of DR 1-103(C).

Based on those violations, the trial panel suspended the accused from the practice of law for four months. Although the sanction that the trial panel imposed is lenient, it is within the range of permissible sanctions. In the absence of any objection to that sanction from either the accused or the Bar, we accept it.

In his brief on review, the accused raises what he characterizes as "affirmative defenses" to the Bar's charges and also objects to various procedures that the Bar used. We address four of the accused's arguments in this opinion. We have considered the remainder of his arguments and reject them without further discussion.

The accused's two primary defenses are related. He asserts that the Bar initiated this and other disciplinary proceedings against him in retaliation for his Bar activities and also to prevent him from expressing his opinions.

He contends that the Bar's decision to pursue those disciplinary charges violated his rights to free speech and due process under the First and Fourteenth Amendments to the United States Constitution. Having reviewed the record in its entirety,[3] we find that the accused has failed to prove that the Bar initiated this disciplinary proceeding either to retaliate against him or to prevent him from expressing his opinions. If, as we find, the accused has failed to prove that the Bar initiated this proceeding for an impermissible reason, then the accused's constitutional claims necessarily fail.[4]

The accused also argues that the Bar's Board of Governors, with the disciplinary counsel's participation, "actually appoints the disciplinary board." The accused recognizes that the Supreme Court in fact appoints the members of the Disciplinary Board, from which the three-person trial panel that heard his case was drawn. In his view, however, the court does not exercise independent authority over the appointment process but merely accepts the Bar's recommendation.

As we understand the accused's argument, he does not contend that any person on his trial panel was biased against him.[5] Rather, his argument rests on the proposition

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[3] Much of the alleged "evidence" on which the accused relies is not in the record. We decline to consider that evidence because "we review lawyer disciplinary matters on the record that was before the trial panel." *In re Harris*, 334 Or 353, 357, 49 P3d 778 (2002).

[4] Given those factual findings, we need not decide whether the accused's version of the facts, if true, would rise to the level of a due process violation. Similarly, we need not decide whether the accused's free speech claim constitutes a defense to a disciplinary charge.

[5] Bar Rule of Procedure (BR) 2.4(g) authorizes an accused to make one peremptory challenge and an unlimited number of challenges for

(Continued on following page)

that the Bar, along with the Bar's disciplinary counsel, plays too large a role in the appointment process. The record, however, does not support the accused's claim that this court did not exercise independent judgment in appointing the members of the Disciplinary Board. Beyond that, in light of this court's *de novo* review in disciplinary cases, the deficiency that the accused perceives in the appointment process has no effect on either the fairness or the legitimacy of our conclusion that the accused committed the charged disciplinary violations. *See In re Reuben G. Lenske,* 269 Or 146, 164, 523 P2d 1262 (1974) (explaining that "[t]he fact that the Board of Governors of the Oregon State Bar may have been selected by what is referred to by the accused as an 'undemocratic process' does not invalidate these [disciplinary] proceedings").

Finally, the accused argues that Oregon State Bar Bylaw § 18.6 is an unconstitutional bill of attainder. *See* US Const, Art I, § 10, cl 1 (prohibiting bills of attainder). That bylaw suspends a member of the Bar's Board of Governors (board) from service on the board during the pendency of formal misconduct charges. The accused is a member of the board currently suspended from service as a result of the bylaw. The constitutional challenge that the accused raises is irrelevant to this proceeding, however. The question whether the bylaw is a bill of attainder has

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cause to members of a trial panel. The rule requires, however, that an accused make any challenge in writing within seven days of written notice of the appointment of the trial panel. In this case, the accused did not challenge any member of the trial panel under that rule.

no bearing on the question whether the accused committed the charged disciplinary violations.[6]

Having considered all the accused's arguments, we find that he committed the four charged disciplinary violations and suspend him from the practice of law for four months. We note that the accused currently is suspended from the practice of law for six months as a result of an earlier disciplinary proceeding. *See In re Paulson (Paulson II),* 341 Or 13, 34, 136 P3d 1087 (2006) (imposing six-month suspension). The four-month suspension resulting from these disciplinary violations will run consecutively to that suspension. *See In re Meyer (II),* 328 Or 220, 229, 970 P2d 647 (1999) (imposing consecutive sentence in similar circumstances).

The accused is suspended from the practice of law for a period of four months, with the period of suspension to run consecutively to the period of suspension imposed on the accused in *Paulson II.*

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[6] The accused also argues that the trial panel violated ORS 45.400 when it allowed an adverse witness to testify by telephone. ORS 45.400(1) provides that, if certain conditions are met, courts may order a witness to testify by telephone in "any civil proceeding" or juvenile dependency proceeding. By its terms, that statute does not apply to a trial panel's hearing in Bar disciplinary proceedings. *See* ORS 9.529 (describing nature of bar disciplinary proceedings); *In re Harris*, 334 Or at 359-61 (same).

IN THE SUPREME COURT OF
THE STATE OF OREGON

In re:	)	No. 04-26
Complaint as to the Conduct of	)	TRIAL PANEL
LAUREN PAULSON,	)	OPINION
Accused	)	

BACKGROUND

On December 13th, 2005, a trial panel convened to hear the charges against the accused. The hearing was conducted at the Washington County Law Library in Hillsboro, Oregon. Three charges were brought against the accused:

1. Communicating with a represented person in violation of DR7-104(A)(1);

2. Revealing a client secret, in violation of DR 4-101(B)(1) and DR 4-101(B)(2);

3. Failing to respond fully to inquiries from the Oregon State Bar in violation of DR 1-103(C).

LAUREN PAULSON, accused, is an attorney, admitted by the Supreme Court of the State of Oregon to practice law in 1973, having his office in the County of Washington, State of Oregon.

On May 11, 2005, The Oregon State Bar filed a formal complaint against the accused.

On June 16, 2005, the accused filed an ANSWER AND MOTION TO STRIKE, which included a motion to make more definite and certain. Trial Panel Chair, Colin Lamb, found the pleading was not responsive, denied the motion,

and the accused was given 10 days to file a pleading that was in compliance.

On August 4, 2005, the accused filed an AMENDED ANSWER AND AFFIRMATIVE DEFENSES AND COUNTERCLAIMS. That answer contained affirmative defenses, counterclaims and request for attorney fees. The Oregon State Bar filed a MOTION TO REQUIRE THE ACCUSED TO FILE AN ANSWER THAT COMPLIES WITH BR 4.3(d). Trial Panel Chair, Colin Lamb struck the counterclaims and request for attorney fees, but did not strike the affirmative defenses. Although the accused was allowed to replead without the stricken language, the accused did not file a further pleading, and in the interest of moving to a hearing with no further delays, no further pleading was required by the panel. Based upon the prehearing ruling by the Trial Panel Chair, the counterclaims were not considered by the Trial Panel, although the affirmative defenses were.

The Oregon State Bar called the following witnesses:

1. Charles Wiren, complainant
2. Sandra Dascher, complainant
3. David Hill, Eugene attorney
4. Martha M. Hicks, Assistant Disciplinary Counsel
5. Mary Cooper, Assistant Disciplinary Counsel

The accused testified on his own behalf.

Representing the Oregon State Bar were Susan K. Hohbach and Stacy J. Hankin. The accused represented himself. Trial panel members were Colin D. Lamb (chair), Allen M. Gabel (public member) and Craig A. Crispin.

The accused has been an Oregon lawyer since 1973. In 1987, the accused represented Charles Wiren in a criminal

case of harassment. In 1993, the accused represented Charles Wiren to expunge the criminal record of Charles Wiren.

Prior to April of 2001, Charles Wiren and Sandra Dascher were living together in a jointly owned home in Florence, Oregon. Sandra Dascher was notified by the State Office for Services to Children and Families (SCF) that they were investigating an allegation, involving Wiren, by the daughter of Sandra Dascher that she had been sexually abused. At that time, Charles Wiren moved out of the home and retained attorney David Hill to represent him on any possible charges arising from this incident.

FINDINGS OF FACT

By stipulation, the following exhibits were received: 1-46, 48, 49, 101-105, 121, 123-127, 129, 121-135, 140 and 141.

The following exhibits were offered and received: 106 and 142.

The following exhibits were offered and not received: 111, 112, 115, 116, 117, 118, 119, 120, 121, 122.

Communicating with Wiren

On or about September 4, 2001, the accused spoke with Sandra Dascher by telephone and agreed to represent her. On September 11, 2001 Charles Wiren called and spoke with the accused and told him that he was represented by his own attorney. On September 27, 2001, the accused met with Charles Wiren and Sandra Dascher at

the accused's office. This date and meeting is important. We find that this meeting did take place on that date based upon testimony of Sandra Dascher, her original complaint to the bar on May 28, 2003 and receipts from the accused's office to Wiren. This meeting would necessarily have involved discussions of the facts of the case, or there would have been no reason for the presence of Wiren. Attorney David Hill testified that he had no knowledge of this meeting nor did he consent to it. He said his client called him and told him about a meeting that was held between himself, Dascher and the accused, although he did not know of the date. Although Charles Wiren testified about this meeting we believe he was slanting his facts because of his dislike for the accused and give little weight to his testimony based upon our observation of his demeanor, his apparent dislike for the accused, and internal inconsistencies in his testimony. We therefore discount his direct testimony, although he does refer to a meeting between himself, Dascher and the accused. This meeting was important because it could have had serious consequences for both Dascher and Wiren, since it represented a potential waiver of the attorney-client privilege for both.

Divulging Confidential Information of Client

On December 17, 2001, a hearing was held in Lane County Circuit Court (ex. 13a). The accused appeared with and on behalf of Sandra Dascher. On page 8 of the transcript, a reference is made about a previous criminal incident involving Wiren when he was a juvenile. On page 9 of the transcript, the Court asks the accused about Wiren: "was the incident as a juvenile a sex offense?" The accused responded "No, it wasn't, Your Honor. It was an

interesting episode. He wanted to – he was 18 years old, he wanted to get out of P.E. He phoned the bomb threat in and they locked out the phone and he was caught about 45 feet away from the phone booth, and he went through a juvenile proceeding and it was disposed of. As far as I know, he's had no history since then."

This information was known by the accused only because the accused had represented Wiren on this matter and had the record expunged. In response to this charge by the Bar of divulging confidential information of a client, the accused responded by alleging that the hearing was secret, and that the matter was brought up by attorney Warburg in that hearing and he simply was responding to a direct question by the Court. The bar argued that the written transcript is not correct and that the first revelation was in fact made by the accused. Since the burden of proof is upon the Bar and this panel did not receive evidence either by Peter Warburg or by anyone else on the question of the accuracy of the transcript or the identity of the person first making reference to the juvenile matter involving Wiren, we do not conclude that the bar has proven by clear and convincing evidence that the written transcript is inaccurate and find that the accused did respond to a direct question by the Court, but his client did not consent to the revelation.

Cooperation with Bar

January 3, 2003 Charles Wiren was upset with the manner of representation by the accused. He filed a complaint with the Bar. His main concern was that he felt the accused did not do an adequate job of representing Sandra Dascher.

January 16, 2003 Wiren filed a second complaint, alleging conflict of interest and disclosure of his prior expunged criminal record. He made no mention that the accused had represented him in connection with the previous criminal matter or expungement case.

January 24, 2003 Mary Cooper, Assistant Disciplinary Counsel (not knowing that Wiren had been represented by the accused) responded to Wiren in effect saying there was not enough in the allegations to pursue the matter. Wiren did not appeal Cooper's conclusions.

March 6, 2003 Sandra Dascher filed a complaint against the accused.

March 19, 2003 The Bar asks the accused for the fee agreement and time and billing records for both Wiren and Dascher.

March 24, 2003 The accused responded to that inquiry with questions and a request to know which statement in the Dascher's complaint he should address.

April 4, 2003 The Bar sends another letter asking for the information requested in the original letter and additional information.

April 16, 2003 The accused responds citing that Martha Hicks is not objective and asking that the Bar transfer the matter to someone else. He asks the Bar to "identify *exactly* what Ms. Dascher states and *exactly* under what disciplinary rule you find that particular statement raises an arguable disciplinary violation and why. I cannot respond unless you link up the specific fact or sentence in her letter with a specific disciplinary violation".

April 21, 2003 The Bar again asks for a response to the complaints.

April 24, 2003 The accused again demands that the bar "identify *exactly* what Ms. Dascher states that raises an arguable disciplinary violation. You have not responded to that request".

May 2, 2003. The Bar reminds the accused that this is the fourth letter requesting information and cites DR1-103(C). This is a detailed letter requesting a response by May 165 [sic], 2003.

May 23, 2003 The Bar sends a certified letter to the accused saying no response has been received.

May 29, 2003 Accused sends a letter to the Bar stating that this is the fourth letter requesting "*exactly*" where in Ms. Dascher's letter there are arguable ethics violations. A minimal response letter is included.

September 2, 2003 The Bar asks numerous specific questions.

September 12, 2003 Accused responds with "Please advise as to how each question relates to which specific disciplinary issue identified in your letter of may 2, 2003". Then he accuses the Bar of delay in violation of DR 6-101(B).

November 7, 2003 The Bar requests a response to the September 2, 2003 letter.

November 12, 2003 The accused responds with a 3 page letter outlining his summary of the procedure since this case was initiated in January of 2002. It contains no response to the request by the Bar for information.

December 10, 2003 The Bar again requests information previously requested.

December 31, 2003 The Accused sends a 3 page letter to the bar accusing them of conflict of interest and misconduct. No response was given to the questions by the Bar.

February 6, 2004 The Bar responds to specific charges by the accused and asks for a complete and comprehensive response to the Bar's questions by February 23, 2004.

March 1, 2004 The Bar does not receive a response and sends a letter requesting the information before March 8, 2004.

March 8, 2004 Accused responded with minimal information advising the Bar how they should conduct their affairs.

April 8, 2004 The Bar refers the matter out to the Local Professional Responsibility Committee.

August 23, 2004 The LPRC returns the file because of inadequate time to pursue the matter.

September 21, 2003 The Bar requests specific information with regard to telephone records, billing records, time records and a client file.

October 7, 2004 The accused responds by stating he will "provide a video tape of the victim". No other information is given.

October 11, 2004 The Bar asks for the requested information, stating that they do not have an interest in the video tape. They ask for the documents by October 18 and to be notified before October 18 when an interview can be made.

October 29, 2004 The accused sends the video tape.

November 3, 2004 The Bar requests for a response to the interview date and the requested information by November 10.

November 10, 2004 The accused sends a fax saying he would get back to the Bar shortly. November 15, 2004 The Bar makes another request for information.

March 18, 2005 The Bar requests to know the legal basis of the video tape disclosure in light of ORS 419AB.255 and asking for a court order obtained authorizing the disclosure. A further request is made for documents requested in the September 21, 2004 letter.

May 12, 2005 The Bar files a formal complaint.

The accused argued that the bar could have come to his office at any time to look at his file and talk to him. The numerous letters he drafted, however, speak for themselves. The accused resisted and obstructed the Bar's investigation.

Affirmative Defenses

The accused filed five affirmative defenses, alleging prosecutorial misconduct, laches, delay, unconstitutionality and statute of limitations. The Rules of Procedure Rule 12.3 provides the format of an answer to any charge in a disciplinary hearing, and paragraph 4 provides for "new matter and other defenses". Although much of the evidence offered was not admitted, the panel listened to testimony by the accused regarding each charge and allowed the accused to make an offer of proof on excluded matters. The panel rejects the accused's affirmative

defenses as wholly insufficient as a matter of both law and fact.

CONCLUSIONS OF LAW

Communicating with Wiren

The accused is charged with communicating with a represented person on the subject of the representation on September 27, 2001, in violation of DR 7-104(A)(1), which states:

(A) During the course of the lawyer's representation of a client, a lawyer shall not:

(1) communicate or cause another to communicate on the subject of the representation, or on directly related subjects with a person the lawyer knows to be represented by a lawyer on that subject, or on directly related subjects, unless:

> **(a) the lawyer has the prior consent of a lawyer representing such other person;**
>
> **(b) the lawyer is authorized by law to do so; or**
>
> **(c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.**

The evidence is clear and convincing that the accused met with Charles Wiren and Sandra Dascher on September 27, 2005 for the purpose of discussing matters about the subject upon which Wiren was represented and that the accused knew Wiren was represented by an attorney who was not notified of the meeting nor consented to it.

Although this meeting was not for the purpose of obtaining an advantage for his client, the communication could have resulted in a waiver of privileged information by both Wiren and Dascher. The accused stated that he did not discuss the matter upon which Wiren was represented, however the evidence convinces us otherwise. The accused had a duty to represent Dascher, and with that duty, it was incumbent upon him to learn the facts. The charges were so serious that Dascher was faced with losing custody of her daughter. It is easy to imagine a situation where any information gained in a meeting could be beneficial to Dascher and detrimental to Wiren. One example would have been if Dascher was offered the opportunity to keep her daughter if she cooperated in the prosecution of Wiren. Because the meeting and the possible consequences arising from it were so important, we believe that the lack of any notations or safeguards on the part of the accused is only consistent with the meeting taking place as alleged by the Bar, and we find the bar has proven the fact by clear and convincing evidence.

With this factual background, the question becomes whether the communication was in violation of DR 7-104(A) as a matter of law. We note that the evidence suggests that the accused and Wiren had a continuing attorney-client relationship. We also note that the Bar has not alleged a violation of any conflict of interest rule, which might have been implicated by concurrent representation of both Wiren and Dascher, whose interests likely were in conflict.

The panel finds the express terms of the rule would establish a violation in this case on those facts. On the other hand, we are mindful that reading the rule accordingly would create an impossible constraint of the public's

ability to seek second opinions, discuss legal matters with attorney friends or acquaintances, or even to complain generally about representation even if such complaints occur at a cocktail party so long as the listener happens to be a member of the bar.

Or Eth. Op. 1991-91, without discussion, approves an attorney's communication with a represented party for the purpose of providing a second opinion. In *In re Hedrick,* 312 Or 442 (1981), the Court refers to "the categorical nature of the rule: communication in the manner covered by the rule is forbidden, period. Id. at 449. The *Hedrick* opinion deals with what appears to be a knowing communication with a represented party in a matter in which the accused was representing an adverse party. In *In re McCaffrey,* 275 Or 23, 28 (1976) the Court noted that "the purpose of the rule is to prevent a person from being deprived of the advice of retained counsel by bypassing retained counsel. It is immaterial whether the direct communication is an intentional or a negligent violation of the rule."

The panel finds no instance of discipline imposed for direct communication with a person who happens to be represented when the attorney does not represent a position adverse to that of the represented party. The facts presented by the parties establish that Wiren was represented by counsel on a matter that while involving facts at issue in the proceeding in which the accused represented Dascher, it was not the same matter. Rather, Wiren was represented in connection with potential criminal charges, not the custody issue involving Dascher's daughter – in which matter the alleged improper communications by the accused occurred.

The rule the Bar alleges the accused violated, however, prohibits direct communication with a represented party also "on directly related subjects." The panel concludes that on the specific facts established by clear and convincing evidence, and limited to these specific facts, the accused violated DR 7-104(A) when he communicated with Wiren on a matter directly related both to the criminal matter on which Wiren was represented by counsel and to the matter in which the accused represented Dascher.

Divulging Confidential Information of Client

The accused is charged with divulging a secret of his former client Charles Wiren on December 17, 2001 in violation of DR 4-101(B)(1) and (2) which state:

(B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

(1) Reveal a confidence or secret of the lawyer's client.

(2) Use a confidence or secret of the lawyer's client to the disadvantage of a client.

The accused defended his action by saying that he was required to answer a direct question from the judge in a proceeding that was not public. We find this defense is without merit. It was apparent as soon as Charles Wiren was advised that his secret was divulged that he was upset and that he had not authorized the disclosure. When the Court asked the accused if the "incident as a juvenile was a sex offense", there was a clear conflict of interest between his duty to represent Dascher and his duty to keep the information about his former client Wiren confidential. The accused had placed himself in that position

and his remedy should have been to withdraw, or otherwise advise the court that he could not respond due to ethical constraints. In this case, he sacrificed the interest of his former client for a subsequent one. The information provided by the accused revealed a secret to all of those present at the hearing, which included members of the public as well as the parties, attorneys and court personnel.

The duty to maintain the confidences is of such high importance that it is codified in ORS 9.460:

(3) Maintain the confidences and secrets of the attorney's clients consistent with the rules of professional conduct established pursuant to ORS 9.490.

We find by clear and convincing evidence that the accused violated both DR 4-101(B) (1) and (2). While the panel is not convinced the Bar has satisfied its burden to prove the accused first raised Wiren's prior conviction, we find it sufficient to establish a violation that the accused revealed the underlying facts and circumstances, a matter on which the Bar has carried its burden of proof.

Cooperation with Bar

The accused is charged with violation of DR 1-103(C) of the Code of Professional Responsibility which states:

(C) A lawyer who is the subject of a disciplinary investigation shall respond fully and truthfully to inquiries from and comply with reasonable requests of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers, subject only to the exercise of any applicable right or privilege.

The Bar has the duty to protect clients in particular and the public in general by insuring that lawyers comply with the Code of Professional Responsibility. In this regard, the Bar began an investigation into the facts surrounding complaints by clients Sandra Dascher and former client Charles Wiren. The record is clear and convincing that the Bar made numerous requests upon the accused over 2 years, which the accused refused to answer, always asserting frivolous reasons for not complying. He responded to a request by the Bar with a request. He responded to a reasonable demand by the Bar with his own demands or threats. Two years of letters speak for themselves. The Bar has proven by clear and convincing evidence that the accused failed and refused to cooperate intentionally and in knowing violation of his ethical obligations. We find that the accused failed to comply with DR 1-103(C).

Summary

We find that the Bar has proved each of three charges against the accused by clear and convincing evidence.

SANCTIONS

Finding that the accused did violate the Code of Professional Conduct, we must impose a sanction. Following the ABA Standards for Imposing Lawyer Sanctions. In Section 3.0, the following factors are considered:

(a) the duty violated;
(b) the lawyer's mental state;
(c) the potential or actual injury caused by the lawyer's misconduct; and

(d) the existence of aggravating or mitigating factors.

As to our finding that the accused divulged the confidences of his client, 4.22 states:

Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

As to our finding that the accused communicated with Wiren while Wiren was represented by an attorney about a represented matter, 6.32 states:

Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

As to our finding that the accused failed to cooperate with the Bar, we use the starndard [sic] stated in In re Conduct of Kluge, 335 Or. 326 at page 50, the Court stated:

In the disciplinary investigation, the Bar made multiple efforts to contact the accused and clearly informed the accused that the investigation was active. As we noted previously, the accused responded to those efforts only by filing multiple ethics complaints against the lawyers who were involved in the investigation, all of which were subsequently investigated and dismissed. Based upon those facts, we conclude that the accused intentionally acted to frustrate the disciplinary process. ABA Standards at 7. Because the disciplinary investigation was

unnecessarily extended as a result, we also determine that the accused caused actual injury to the Bar and to the public. The appropriate sanction for such misconduct under the ABA Standards is a suspension. ABA Standard 7.2

Mitigating and Aggravating Circumstances

We have determined that suspension of the accused is appropriate. Section 9.0 of the ABA Standards sets forth aggravating and mitigating circumstances which are to be considered when determining the period of suspension. We set forth those aggravating factors which we deem applicable:

1. Prior disciplinary offenses. The accused has received a public reprimand (In re Complaint as to the Conduct of Lauren Paulson, 335 Or. 436, 71 P2d 60). The reprimand was imposed by the trial panel on October 2, 2002. Paulson appealed and the Supreme Court ruled on June 5, 2003. These dates were later than two of the charges brought by the Bar, but not later than the charge that the accused failed to cooperate. Many of the letters and warnings by the Bar were after this public reprimand. For that reason, we find this an aggravating circumstance.

2. Multiple Offenses. Although two of the charges are separate, they did arise out of the same representation, and we therefore do not give this aggravating circumstance a great deal of weight.

3. Bad Faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or order of the disciplinary agency. The ABA Standards appears to consider obstruction as an aggravating circumstance. Since we have found the accused did violate the Code of

Professional Conduct specifically on this charge, we do not consider this an aggravation. If obstruction was only an aggravating circumstance, then it would not be applicable unless the accused was found to have violated some other rule. We consider the obstruction to be a violation rather than an aggravating circumstance. In effect, the Bar has chosen its remedy.

4. Refusal to acknowledge wrongful nature of conduct. The accused appears to believe that at no time did he do anything wrong. In fact, his position is that the Bar is wrong for pursuing this matter. We consider this an aggravating circumstance.

5. Substantial experience in the practice of law. The accused has been practicing law since 1973. He represented Wiren in 1987 and again in 1993. We find that the accused has substantial experience and this is therefore an aggravating circumstance.

6. Absence of a dishonest or selfish motive would be a mitigating circumstance. Although the accused appears not to have committed the violations against Wiren or Dascher for selfish motives, it is clear that his delay and lack of response against the Bar was for a selfish motive, so there is no mitigating circumstance.

7. We find as a mitigating factor the lack of clear guidance provided by DR 7-104(A) in the context of the facts involved in this violation. While the rule may be violated by negligent as well as intentional conduct, it is not clear to the panel that the accused reasonably was on notice, or should have known, that his direct communication, under the circumstances involved, constituted a violation of the rule.

DISPOSITION

It is the decision of the trial panel that the accused be suspended for a period of 4 months.

IT IS SO ORDERED

Dated this 27 day of December, 2005.

/s/ Colin Lamb
Colin Lamb – Trial Panel Chair

/s/ Craig Crispin
Craig Crispin – Trial Panel Member

/s/ Allen M. Gabel
Allen M. Gabel – Trial Panel Member

To: Nena Cook<Nena@sussmanshank.com>, mcomstock@garrettlaw.com, amenashe@gevurtzmenashe.com, edmundp@pdx.edu, gerry@gcbpc.com, betteofbog@att.net
From: "Michael C. Zusman" <mikez@evanszusman.com>
Subject: OSB Disciplinary System – A Proposal
Cc:
Bcc:
Attached: Z:\MichaelZusman\Disciplinary Board\Memo to OSB P &. G Comm., 7-15-05.wpd; Z:\MichaelZusman\Disciplinary Board\Memo to OSB P &. G Comm., 7-15-05.pdf;

Dear Policy and Governance Committee Members:

I am the 2005 Chair of the OSB Disciplinary Board. My service to the Board persuades me that the OSB disciplinary system needs to be fundamentally reoriented from a crime-and-punishment model to a structure that focuses, in the first instance, on education and rehabilitation.

My hope had been to have a detailed proposal to you well before your meeting today to which I have been invited to attend. Unfortunately, my professional and volunteer obligations have eaten up the time I had hoped to pour into this critically important remaking of our disciplinary system. As it stands, based on my experience with the Board, the current system operates in a manner that is neither in the long-term best interests of our membership or the public. Likewise, my experience persuades me that the current system discriminates, as a practical matter, against those lacking the resources to challenge complaints of professional misconduct levied against them.

I am attaching a sheet which provides a little bit more information about the concept I envision. It is all I can provide for now. I apologize for this late submission. Because of the tardiness of this proposal, all I am recommending is

the formation, as of January 1, 2006, of a panel to study the disciplinary system reorientation concept make such recommendations as this panel may see fit.

Very truly yours,

Michael C. Zusman
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MEMORANDUM

From: Michael C. Zusman
OSB Disciplinary Board Chair

To: OSB BOG Policy and Governance Committee

Subject: Proposal for OSB Disciplinary System Reorientation

Date: July 15, 2005

The current crime-and-punishment orientation of the OSB's disciplinary system should be fundamentally altered. Except in cases of the most egregious allegations of wrongdoing or repeated instances of misconduct, lawyers who are believed to have violated our Disciplinary Rules ought to be given the opportunity to undergo intensive education and rehabilitation to avoid disciplinary sanction.

The goal of this proposal is remake good lawyers. My experience as an attorney (with no disciplinary history) and as a member of the OSB Disciplinary Board persuades me that the vast majority of wrongdoing by our colleagues is the result of (a) inexperience, (b) practice management deficiencies, (c) substance abuse problems and (d) mental illness. Accused lawyers who are willing to consider or admit that they suffer these problems can, in my opinion, successfully be rehabilitated. For these individuals and the members of the public they could go on to serve, disciplinary sanctions stand as a black mark which can never be fully erased. This is unfortunate.

I am also deeply concerned that our system operates disciminatorily [sic]. While anecdotes do not prove anything, I have seen multiple instances of stipulated disciplinary

measures which have appeared either unduly harsh or unduly lenient. As to the former, as Disciplinary Board Chair, I have felt constrained to look behind the stipulation because it is the apparent agreement of the Bar and accused lawyer. More often than not, however, the accused lawyer is an unrepresented sole practitioner, frequently without much practice experience. On the other hand, the instances in which the discipline has appeared too light have uniformly involved lawyers who had the resources to retain one of the small number of highly specialized attorneys whose practice focuses on ethical issues. It is unacceptable for the Bar to operate a two-tiered disciplinary system.

The Bar already has in place the basic building blocks from which a reworked system can be formed. We are fortunate to have the Oregon Attorney Assistance Program which has been helping troubled lawyers for decades and is a leader in the field. We also have a strong practice management team as part of our Professional Liability Fund. I believe these elements of the Bar could be beefed up and perhaps their resources reallocated to serve the ends of educating and rehabilitating lawyers who have erred.

While we do have in place a "diversion" program, its utility is severely limited. First, a diversion decision is entirely discretionary with the SPRB. BR 2.10(a). Second, the eligibility criteria are drawn so narrowly that few accused lawyers can qualify. BR 2.10(b)(1). The program I envision is one in which education and rehabilitation stands at the threshold of the system, with the full mechanism of attorney discipline standing in the background, to be deployed only if (a) the accused lawyer is alleged to have engaged in a narrowly drawn category of

disqualifying behavior, or (b) the lawyer fails to comply with the educational and rehabilitation regimen crafted to deal with the lawyer's apparent problems.

I realize the foregoing probably raises at least as many questions as it answers. I am also cognizant that there will be those who would oppose this proposal as protectionist or for other reasons. In response, I would offer again that this proposal is intended as a net benefit to the public as well to the profession and those who stand accused of wrongdoing.

My current request of the Policy and Governance Committee is limited. I am asking only that it propose to BOG the empaneling [sic] of a study group to make recommendations to it regarding the reorientation of the disciplinary system along the lines proposed. My suggestion would be that the group include one or more representatives of BOG, judiciary, OAAP, PLF, OSB counsel, the public and such other constituencies as may be helpful to the study group's deliberations.

Thank you for your consideration of the foregoing.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	) OSB Case No. 04-26
Complaint as to the Conduct of	) Supreme Court Case) No. S53185
LAUREN PAULSON,	)
Petitioner on Review.	)

BRIEF OF LAUREN PAULSON

Petition for Review of the Order of the
Trial Panel Dated December 27, 2005

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May 15, 2006

* * *

PROCEDURAL POSTURE

A. The 'Gensman' case is presently pending before The Supreme Court of the State of Oregon, *In re: Lauren Paulson,* SC Case No. S52465.

B. Paulson has sued the Oregon State Bar (OSB) over, inter alia, the new OSB Bylaw 18.6 which suspended him from OSB's Board of Governors (BOG) in October, 2004 in *Paulson v. Carter, et al.* District of Oregon Case No. CV04-1501 KI

QUESTIONS PRESENTED

A. Does the Oregon State Bar Disciplinary process, as presently configured, designed and implemented deny its Members procedural and substantive due process in violation of the First, Fifth and Fourteenth Amendments to the United States Constitution?

B. Does the Oregon State Bar, through its Executive Director and Disciplinary Counsel engage in reprisal against its Members?

1. Nature of the Action

This 'Dascher' case is the sequel to the 'Gensman' case by the Oregon State Bar (OSB) against Lauren Paulson, the currently suspended Board of Governors' (BOG) Member. Dascher is filed to continue to silence Lauren Paulson's BOG Region 4 newsletter. It is filed to silence Lauren Paulson's blowing of the whistle on OSB's Executive Director, Karen Garst's attempt to get the OSB to purchase her financially troubled church, The Living Enrichment Center, the owners (Morrisey) of which were convicted of multiple felonies. It is filed to continue the suspension of Lauren Paulson *who was duly elected by the lawyers in Region 4 for a four year term (2003 to 2006).* The Oregon State Bar enacted an illegal bill of attainder in their ***new rule*** (some now call it the "Paulson rule"), BOG Bylaw 18.6, in October of 2004 which states that any BOG member is suspended if there is a disciplinary complaint pending against that person. This retroactive rule suspended Paulson for a bar complaint (Gensman, currently now pending in this Court) that was first made in 1998. The Trial Panel decision in the Gensman matter was rendered in *April, 2005.* This case (Dascher), dormant since 2003, was filed by the Bar in *May, 2005* to ensure that Paulson was not restored to the BOG during his term.

2. Nature of the Judgment Sought to be Reviewed

This Member of the Oregon State Bar seeks reversal of the Trial Panel Opinion. Paulson also seeks an investigation by the Supreme Court of Oregon into these matters which has, for too long, overlooked the blatant transgressions by Jeff Sapiro and Karen Garst of Oregon State Bar Members in the disciplinary process which are under the jurisdiction of this Court.

3. Statutory Basis of Appeal

ORS 9.536(1), Bar Rule 10.1 and 10.4, ORAP 11.25.

4. Dates for Appeal

The Request for Oregon Supreme Court Review was made within the 60 days allowed by Bar Rule 10.1 and 10.3.

5. Sub-Questions Presented on Appeal

A. Whether all of OSB's current disciplinary proceedings are nugatory because ORS 9.534 requires that the Supreme Court of the State of Oregon appoint the disciplinary board. In truth and in fact, the OSB's BOG actually appoints the disciplinary board through their Appointments Committee and Jeff Sapiro OSB's Disciplinary Counsel participates in that selection in violation of the clear requirements ORS 9.534 which states: *(1) The Supreme Court shall appoint a disciplinary board to hear formal charges against members of the bar.*" (**App 1**) (Emphasis Supplied) Nowhere does it say that the Supreme Court of Oregon may simply approve a disciplinary board appointed by the BOG with advice and consent from OSB's Disciplinary Counsel. The appointment of the disciplinary board is a nondelagable duty in view of the statutory language.

B. Whether the facts and the law support the Trial Panel decision and rulings during the proceedings.

C. Whether the Trial Panel decision is defective because it did not consider an analysis of the "Clear and Convincing" standard as required by Bar Rule 5.2

D. Whether this case is a product of reprisal by the Bar's Executive Director and Disciplinary Counsel exemplified by, inter alia, OSB's appointment of the 'Special Investigator' ordered to look into " . . . Lauren's cases . . . " by Karen Garst's memo of January 13, 2004 to OSB President Nena Cook.

E. Notwithstanding Paulson's objection (Tr.50), the Trial Panel allowed Ms. Dascher to appear by telephone without the required 30 day prior notice and without following the required procedures under ORS 45.400.

6. Summary of Facts (See Facts in Detail in Paulson's Trial Memorandum – ER)

Discipline and Paulson – It is worthy to note that Paulson, an Oregon native, had *no* disciplinary complaints for the first fifteen years of being a lawyer (1973 to 1989). (**App 2**) It was only upon his entry into the private practice of law in Oregon (1990) that the ethical complaint shower began. Even then, none of these complaints ripened into a formal complaint against him until 2000. Loss of innocence is here a lifetime pursuit. After being drawn and quartered by the Ring complaint (**App 3, ER-48**) where he was found guilty of charging an 'excessive fee' for a solitary $67.50 charge (later deleted) Paulson began his own study of this complaint shower while in private practice. Paulson learned that his 23 complaints emanated from three sources:

1. Clients who didn't want to pay their attorney fee bill. (Ring)

2. Adversaries who didn't like getting sued. (Gensman)

3. Clients boyfriends. (Dascher) (**App 2**)

In 2001 Jim Hennings resolution (**App 4**) to study Oregon's disciplinary system passed in the House of Delegates (HOD). Paulson applied to Ed Harnden to be on the Disciplinary Task Force (DTF), but was refused. In 2002, the Disciplinary Task Force (DTF) did a yeoman's job and rendered their report in July of 2002. (**App 5**) Paulson attended all the DTF meetings in 2002 anyway and was complemented by DTF Chair Dennis Karnopp for his DTF participation at the Annual 2002 HOD meeting in Eugene when HOD voted in favor of the DTF recommendations. Again, Bar leadership including Karen Garst and Jeff Sapiro were against the DTF changes.

Unfortunately, the DTF did not get to all nine of the matters identified by the resolution. DTF recommendations adopted in 2003 were the Client Assistant Office, mediation and diversion programs. But, Jeff Sapiro and Karen Garst do not believe in the amelioration of the disciplinary process as recommended by the DTF. As of August, 2005 **the Oregon State Bar has not mediated a single lawyer disciplinary case.** (**App 6**) The Oregon State Bar has refused to mediate this case or the Gensman case. This is because there is a culture of persecution. See Charles Williamson's letter to the Disciplinary Task Force at the Oregon State Bar. (**App 7, Letter # 47**) wherein he states " . . . the Bar Disciplinary Counsel may be too zealous in the prosecution (or persecution) of attorneys." It is not just happening to Paulson. It is legion in Oregon. Note the summary of the other 46 letters to the DTF that the Bar leadership has ignored. (**App 7**) This is where the Oregon Supreme Court should no longer turn a blind eye. Mr. Sapiro has decided, even though there is nothing in the Bar Rule mediation rule 4.9 to that effect, that the

SPRB must order mediation. Thus, with him being counsel to the SPRB, no mediations occur. All of the salutary effects of the DTF are nullified by him with the concurrence of Karen Garst. No one is addressing this issue even though President Charlie Williamson in his November 2003 article in the Oregon State Bar Bulletin to OSB membership stated: "*Delay in the investigation of inquiries and complaints and in the resolution of formal disciplinary proceedings remains a concern of the board, . . . the board will continue to monitor and evaluate the operation of the disciplinary* process.". (**App 8**) Indeed, delay has been the subject of concern throughout yet there is not one time requirement in the Bar Rules applicable to anything Disciplinary Counsel's office has to do with any time constraints in the entire process. All of the time requirements apply to others. This is significant. In 2001 this Supreme Court observed *In re Lawrence,* 31 P3d 1078 (2001) "The Bar concedes that it is responsible for the long delay in this proceeding. During the delay, the accused abandoned his solo law practice. . . . " *Lawrence* at 1085

Since 1990, when Paulson entered private practice (after a two-year internship at a law firm and 17 years as a lawyer), he has never been free of a disciplinary investigation except for a brief window in 1996. This exacts a terrible toll on solo practitioners. For one thing, attorneys may not get Bar client referrals while a formal complaint is pending. For another, the attorney's staff always wonders if they will have a job – is the attorney going to get disbarred??

But there is another issue. Since the Client Assistance Office began their operations in August of 2003, most of Disciplinary Counsel's workload has disappeared. Indeed, in 2003 there were over 400 cases pending. With the same

number of lawyers, the Disciplinary Counsel's office now has only 200 cases pending. *See, OSB Annual Report, Disciplinary Counsel's Office, March 2006.* Jeff Sapiro's budget for 2005 is 1.7 million. This means we are spending $85,000 per disciplinary case pending. Martha Hicks testified in this case that she has only 15 pending cases. (**App 9**) A typical attorney in private practice has anywhere from 50 to a 150 pending cases depending on the type of practice. So, why is there delay? *See Disciplinary Process Study,* OSB BOG Policy and Governance Committee (2005) The 2006 Bar Directory lists 14 lawyers in the Disciplinary Counsel's office. This means each lawyer in the OSB Disciplinary Counsel's office is handling approximately 14 pending cases each. So again, why is there delay of which Paulson complained of to Sapiro in 2001 on the Gensman case?? As stated above it takes the Disciplinary Counsel's office an average of 8 months to investigate and dismiss a nonarguable case. That is exactly the average time Paulson's nonarguable cases have pended before dismissal. (**App 2**) Why so long if there is no merit to the case and the workload is so low? Finally, the number of files opened by the Disciplinary Counsel's office has declined every year since 2000 when they opened 1,404 cases to 2005 when they only opened 404 cases. *See, 2005 Annual Report, OSB Disciplinary Counsel's Office,* March 2006 No one is watching this store, except Sapiro and Garst knew that Paulson was. . . .

Having suffered the ignominy of the Ring case and having made a bar complaint against Mr. Sapiro for the enormous delay in the Gensman case in 2001 and naively thinking that the Oregon State Bar would be interested in these findings, Paulson traveled to Corvallis in 2002 to attend an OSB BOG meeting to present these findings on

himself and his experience with the Oregon State Bar's disciplinary department to the Board. The BOG gave cursory attention to Paulson's presentation. The BOG members had a wine tasting tour scheduled and took little note of Paulson's information.

Another formal proposal by Paulson to BOG to address these issues in 2004 also was ignored. (**App 10**)

Disciplinary Counsel – It has recently been acknowledged by the Oregon State Bar that Jeff Sapiro does, indeed, attend the OSB BOG Appointments Committee meetings. (**App 11**) Paulson, as a past member of the BOG Appointments, hereby attests to the fact that Jeff Sapiro *actively* participates in the selection of the disciplinary board and actively participated in the Appointments process to and including the panel members on the present Disciplinary Board. By rule (BOG Bylaw 18.100, Jeff Sapiro is also the attorney for the State Professional Responsibility Board (SPRB), viz. "The SPRB will receive the counsel and advice of the Office of Disciplinary Counsel of the Bar." (**App 12**) Thus, OSB's Disciplinary Counsel is the attorney for the SPRB, the grand jury for the disciplinary process *and* participates in the selection of the disciplinary board or the judges for the disciplinary process in Oregon. This system allows Oregon's Disciplinary Counsel to control all parts of the process and engage in reprisal with impunity.

Executive Director – Karen Garst came to her position at the Oregon State Bar from a former career as a lobbyist. Her leadership and cozy relationship with the Managing Attorneys of Portland law firms has ensured that Portland lawyers occupy the Presidency of the Oregon State Bar. (**See, App 13** "Brown Baggers" are Karen

Garst's visits to the Portland downtown law firms) Indeed, over the last seven years, all of the Presidents of the Oregon State Bar, save one, comes to us from Portland (Harnden, Lopez, Williamson, Cook, Rawlinson, Menasche). Early in Paulson's term on BOG, Garst, Sapiro (and George Riemer) in league with William Carter, Nena Cook and Dennis Rawlinson decided that Paulson was too much of an iconoclast and set about to rid them of him. See Garst memo dated January 13, 2004 (following Paulson's first year on BOG) to Nena Cook which states:

> "I just received a copy of a letter from Lauren to Discipline. It's getting pretty bad there too. **I am going to talk to Jeff (Sapiro) about a special investigator in Lauren's cases.**" **(App 14)**

That special OSB investigator, Lynn Bey-Rode was assigned to the Dascher case and all subsequent Paulson disciplinary cases. (ER-42, 142 (sic))

7. Argument

Through benign and active neglect, the Supreme Court of Oregon has allowed Karen Garst and Jeff Sapiro to wage an inquisition against Oregon lawyers. It has to stop.

United States Constitution – The timing of the filing of the Dascher case, May of 2005 was not accidental. The effect of this filing was to keep Paulson off of BOG by virtue of the *new rule,* BOG Bylaw 18.6 The result is a denial of Paulson's constitutional rights in two respects. One, Bylaw 18.6 is an unconstitutional bill of attainder. A bill of attainder is an illegal singling out and punishing of one for past acts without due process of law. *See, Generally,* 16A Am Jur 2d, Constitutional Law §655 (1979) BOG

Bylaw 18.6 does that by nullifying Paulson's election to BOG by Region 4 lawyers in 2003 for past acts by Paulson in 1997. But Bylaw 18.6 is much more egregious as applicable here. Freedom of the Press and of Speech is at issue. Paulson decided to challenge OSB leadership **and** began a quarterly newsletter to over 900 Region 4 lawyers soon after he was elected in February, 2003. The suspension from BOG by Rule 18.6, which received wide publicity including an article in the *Oregonian* also put Paulson out of business as a solo practitioner in his hometown of Aloha. Thus, the effect of Dascher when combined with 18.6 violates freedom of speech and of the press. The Region 4 newsletter is now dead. Paulson is out of business. All without due process of law.

Due Process: The due process clause has as its purposes the insuring of the fair and orderly administration of the laws. Due process is required to protect people against government burdens except in accordance with valid laws of the lands. Here, 18.6, while on its face appears to have a salutary purpose, it had as its object only one lawyer in 14,000 Oregon lawyers, Paulson.

Due process is even more important when its denial has the effect of nullifying freedom of speech. Due process has to do with the denial of fundamental fairness, shocking to the universal sense of justice; it deals neither with power nor with jurisdiction, but with their exercise. *Kinsella v. United States,* 361 US 234, 4 L Ed 2d 268, 80 S CT 297.

In short, Dascher, when combined with Bylaw 18.6 violates the U.S Constitution by administratively nullifying an election, throttling Paulson's freedom of speech, and

putting him out of business all because he volunteered to serve the leadership of his Bar.

Reprisal (Jeff Sapiro) – Paulson made a bar complaint against Jeff Sapiro in 2001 because he sat on the Gensman complaint for over a year without action. Interestingly, bar complaints against disciplinary counsel are required by Bar Rule 2.6(g) to be investigated by the Chair of the SPRB. But, as pointed out above, Jeff Sapiro is the attorney for the SPRB under BOG Bylaw 18.100. (**App 12**) Thus, under OSB rules the client is required to investigate their own attorney – an immutable conflict of interest. Unsurprisingly, Mr. Uerlings, then the Chair of the SPRB found no probable cause against his attorney Jeff Sapiro. What is surprising, is that it took him less than a month to investigate this complaint when the average time it takes Jeff Sapiro's department to investigate their cases is 8 months. (**App 15**) Mr. Sapiro then flew into action on the Gensman matter. He assigned it to Mr. Appleman who had never litigated a single case in Oregon or anywhere else. He is a Federal Contract attorney who also wanted to be Bar Counsel. He swung into action producing a 300 page report on Paulson's activities there and a 66 page report to the SPRB. That case pends before the Oregon Supreme Court per above.

Reprisal (Karen Garst) – No clearer statement of bald reprisal can be found anywhere as in her January 13, 2004 memo to Nena Cook that she wanted to assign a special investigator to Paulson's cases. If our Board of Governors and the Justices of our Supreme Court countenance this against Oregon lawyers serving in policy making positions then who are we? This is a subterfuge of the concept of protecting the public against who? Against a small town lawyer, the son of an immigrant, who is a

veteran, the past President of the Washington County Bar and one who wants to serve his community, his Bar and his country. But it is worse than that.

Disciplinary Task Force – As part of the DTF process there was a solicitation from Oregon lawyers. That produced a plethora of letters summarized here. (**App 7**) Even though that cry from the unwashed masses of Oregon lawyers was conveyed to its leadership, no one has looked into the issue of reprisal until Paulson forced the reexamination of these issues in his brief tenure on the BOG. One way of examining the issue of reprisal or fairness by Disciplinary Counsel was to request feedback from Region Four lawyers through –

Paulson's Region Four Newsletter: Paulson sent out his fourth quarterly newsletter to Region Four lawyers on September 30, 2003. (**App 16**) In that newsletter Paulson asked for feedback on, inter alia, OSB's disciplinary counsel's staff. One respondent, Craig Crispin stated some opinions and responded: " . . . they (disciplinary staff) " . . . seems they might over-prosecute to some degree. I like the idea of remediation (sic) as opposed to prosecution as a goal." (**App 17**)

Reprisal (William Carter) – Even though Charlie Williamson was still the President, Bill Carter decided on October 21, 2003 in a memo to Karen Garst that **Paulson ". . . . is going to be the crises of my presidency, *we might as well get on with it.*** (**App 18**) That began the year-long effort to remove Paulson from BOG. The Dascher case is the culmination of that process.

8. Conclusion

Agnes Peterson captivated attendees at a Washington County Bar Association meeting 20 years ago while running for Region Four's position on OSB's Board of Governors. She opened her presentation by stating openly and without sop, "I love lawyers!". In life, there a [sic] lawyers who love and respect lawyers and there are those that don't. The Ring Trial Panel, where Paulson was convicted of charging an excessive *and* an **illegal fee**, (**ER-48**) was made up of a lawyer who is a prosecuting attorney from St. Helens and a lawyer who was a prosecuting attorney from Beaverton. The end result of Mr. Sapiro participating in judge selection is the persecution of regular Oregon lawyers as here. They not only wanted to prosecute Paulson for a $67.50 charge, but also with charging an illegal fee. The problem was that the Bar *had not charged Paulson with an illegal fee violation* (which is like charging more than the Workers' Compensation statute allows, for example). The only Bar charge was an excessive ($67.50) fee. (Tr. 152) The Oregon State Bar through leadership and lawyers who do not care for lawyers and who do not respect those who are not part of the oligarchy has created an unfair culture of punishment, particularly those that challenge the status quo. It has rigged the disciplinary system to enable reprisal by lawyers who have very little acquaintance with the private practice of law against the subculture of lawyers who are in the private practice of law and who are the bedrock of our judicial system and our communities. The Supreme Court of the State of Oregon must examine how the system when awry and demonstrate leadership in fixing it.

DATED this 15th day of May, 2006.

Respectfully submitted,

/s/ Lauren Paulson
LAUREN PAULSON, OSB #73232
Petitioner on Review

I hereby certify that the foregoing Petition for Review of Lauren Paulson is a certified true copy of the original herein.

LAUREN PAULSON, OSB #73232

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	Case No. 04-26
Complaint as to the Conduct of	)	OSB MEMBER'S TRIAL MEMORANDUM
LAUREN J. PAULSON,	)	
Accused.	)	

BACKGROUND

Cal Wiren – Cal Wiren's grandparents, Clayton and Florence Brown lived on 174th Ave. where I grew up. Clayton Brown is a retired finish carpenter in his 80's and remains a client of mine. Florence Brown, his wife, is deceased.

Florence and Clayton were friends of my parents. Clayton and Florence had four children including Dorothy Brown. Cal is the son of Dorothy (Brown) Wiren and Chuck Wiren. I went to grade school with Dorothy (Brown) Wiren and her siblings David, Norm and Ray Brown. Cal is 36 years old.

Sandra Dascher – Sandra Dascher is 56 years old. Cal Wiren was accused of improperly touching Ms. Dascher's adopted maternal granddaughter (not her *daughter* as is incorrectly stated in paragraph 3 of the formal complaint). (See Exhibit 5, Page 2) Cal Wiren was also accused of abusing Ms. Dascher's other maternal granddaughter that was also adopted by her. (See Exhibit 5, Page 3,4)

Lauren Paulson – Aloha was a working-class neighborhood following World War II. Most of the fathers

living on 174th Avenue in Aloha, where I grew up and the Brown family lived, were veterans and blue collar workers. Most of the mothers worked at home. My parents, Eva Quarnstrom and Johan Paulson were immigrants from Sweden and moved to Aloha in 1935. I practice law in the community where I grew up.

I have had the good fortune to represent Cal's grandfather, Clayton, both of Cal's uncles, one of his uncle's daughter, one of his uncle's wife, his sister, and his parents. Being a lawyer in our home community of Aloha, I have also represented our seventh and eighth grade teachers from Aloha Grade School and many classmates and acquaintances of this community. Moreover, I am active in the community having been the Chair of CPO 6, the Aloha town hall forum and I have been President of the Washington County Bar Association. Most recently I was elected by the lawyers of Washington County, Tillamook County, Clatsop County and Columbia County to serve on the Oregon State Bar Board of Governors. These disciplinary matters produced a new rule that suspends my participation on the Board of Governors until they are resolved. The Trial Panel may take judicial notice of that matter pending in Oregon Federal District Court, *Paulson v. Carter*, et al., Case #3:04-cv-1501.

CHRONOLOGY

1987 – Paulson represents Cal Wiren on criminal matter

1989 – Cal Wiren seeks legal advice from Paulson

1993 – Paulson represents Cal Wiren on legal matter

1996 – Cal Wiren seeks legal advice from Paulson

2001 – Paulson represents Sandra Dascher

2002 – Cal Wiren complains to OSB – Mary Cooper dismisses complaint 2003 – Sandra Dascher complains to OSB – Martha Hicks commences investigation – Assigned to new OSB investigator Lynn Bey-Roode

2004 – Martha Hicks refers to LPRC – LPRC returns file to OSB without further investigation

2005 – SPRB issues formal complaint

SUMMARY OF OSB COMPLAINT

The formal complaint filed by the Oregon State Bar (OSB) alleges:

1. That I discussed the child abuse matter with Cal Wiren on September 27, 2001 when I knew he was represented by a lawyer in the matter, in violation of DR 7-104(A)(1)

2. That I revealed a client secret to Cal Wiren's disadvantage by advising the court in the Dascher matter on December 17, 2001 that he had previously been found guilty of threatening to bomb a school in violation of DR 4-101(B(1) & (2).

3. That I failed to provide a substantive response to OSB's questions on

A. September 2, 2003 (Exhibit 29)

B. February 6, 2004 (Exhibit 35)

C. September 21, 2004 (Exhibit 40)

D. November 3, 2004 (Exhibit 44) (and

E. March 18, 2005 (Exhibit 46)

SUMMARY OF PAULSON'S RESPONSE

1. I deny that I initiated discussions with Cal Wiren or his case with him while he was represented by a lawyer. He did contact me to arrange my representation of his girl friend, Sandra Dascher in 2001.

2. I responded to the Court's inquiries on December 17, 2001 in confidential juvenile court proceedings in Eugene, Oregon involving Christine Dascher, Ms. Dascher's adopted granddaughter.

3. I cooperated on the *OSB's inquiries above by responding* to their specific requests enumerated above as follows:

A. September 25, 2003 (Exhibit 108)

B. March 8, 2004 (Exhibit 120) (Also see Exhibit 34, 114-119) On May 24, 2004 I wrote to the assigned LPRC investigator that " . . . my file is available for your review at your convenience." (Exhibit 123) The LPRC did not take me up on that offer.

C. October 12, 2004 (Exhibit 126)

D. November 10, 2004 (Exhibit 127) On November 11, 2004 Cal Wiren issues his death threat to me. (Exhibit 128)

THE LAW

1. The Code of Professional Responsibility

DR 7-104 Communicating with a Person Represented by Counsel (A) During the course of the lawyer's representation of a client, a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation, or on directly related subjects, with a person the lawyer knows to be represented by a lawyer on that subject, or on directly related subjects, unless:

(a) the lawyer has the prior consent of a lawyer representing such other person;

(b) the lawyer is authorized by la[illegible]o do so; or

(c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such notice or demand shall also be sent to such other person's lawyer.

This prohibition includes a lawyer representing a lawyer's own interests.

2. **DR 4-101. Preservation of Confidences and Secrets of a Client**

(B) Except when permitted under DR 4-101 ©), a lawyer shall not knowingly :

(1) reveal a confidence or secret of the lawyer's client.

(2) Use a confidence or secret of the lawyer's client to the disadvantage of the client.

(C) A lawyer may reveal:

* * *

(2) Confidences or secrets when permitted by a Disciplinary rule or requied by law or court order. . . .

3. DR 1-103 Disclosure of Information Authorities; Duty to Cooperate

> C. A lawyer who is the subject of a disciplinary investigation shall respond fully and truthfully to inquiries from and comply with reasonable requests of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers, subject only to the exercise of any applicable right or privilege.

DISCUSSION

(The discussion is in the order of the formal complaint. The Oregon State Bar's Trial Memorandum discusses these items in a reverse order from their Formal Complaint)

1. Did Paulson discuss the child abuse matter with Cal Wiren on September 27, 2001 in violation of DR 7-104(A)(1).

Oregon State Bar Allegations:

The Formal Complaint and Trial Memorandum does not provide any information on who, what, where, or why such a putative discussion took place. The only information supplied by the Bar is that the alleged discussion occurred on September 27, 2001. The Bar hints that it was Wiren that initiated the communication. (Tr. Mem. 7:24-25) No matter says the Bar, even negligent communications with an unrepresented person is a violation of the law citing *In re McCaffrey*, 275 Or 23, 28, 549 P2d 666 (1976) Mr. McCaffrey represented Mrs. Castro in Oregon on visitation issues and knew Mr. Castro had an attorney and, wrote to Mr. Castro's attorney to that effect. Six months later Mr. McCaffrey wrote a letter directly to Mr.

Castro. The record was that he was careless in making that communication. Relying on *In re Gygi Or.*, 75 Adv Sh. 3690, 3695-3696, 541 P2d 1392 (1975) where the court held that negligence in making court appearances and disbursing funds did warrant discipline. The apparent rule of the decision is "A breach of the Code is subject of disciplinary action if done negligently and if the breach is apt to cause the harm the Code sought to prevent." *Id* at 668 The purpose of Rule 7-104(A)(1) is to prevent a person from being deprived of the advice of retained counsel by bypassing retained counsel.

In order for *In re McCaffrey* to apply the Bar would have to show:

1. That I caused a direct communication with Cal Wiren as opposed to Cal Wiren causing a direct communication with me.

2. That alleged communication prevented Cal Wiren from the advice of his retained counsel, and

3. That the communication bypassed retained counsel

Evidence: The billing indicates that Paulson only nad a conference with the client, Ms. Dascher on September 27, 2001 (Exhibit 9) It is noteworthy because on 9/10/05 and 9/24/05 entries indicate telephone calls from Wiren upon his initial inquiry of me as to whether or not I would represent Ms. Dascher. There is certainly nothing wrong with Cal Wiren helping Ms. Dascher find an attorney while having representation himself.

Ms. Dascher's copious notes do not indicate a discussion with Paulson and Cal Wiren on September 27, 2001 even though there is an entry in her notes of that date. (Exhibit 104) If the OSB has "undisputed evidence" that I

discussed the child abuse matter with Cal Wiren, why is it a secret? Why is it a secret who Mr. Wiren was represented by at the time. Why is that lawyer not complaining? What was discussed?

2. Did Paulson violate DR 4-101(B) by knowingly revealing a client secret, to his disadvantage, to the court on December 17, 2001 that Cal Wiren had previously been found guilty of threatening to bomb a school and that the conviction been expunged.

Oregon State Bar Allegations:

The Bar states it will present evidence that Mr. Wiren's conviction and expungement were a client secret, the disclosure of which would be embarrassing or would be likely detrimental to Cal Wiren. The Bar alleges that I did that " . . . in an effort to impune (sic) Wiren's character and imply to the court and others that because of his past criminal history Wiren must have done what was alleged in the child abuse matter." (Tr. Mem. 6:19-21) Now, why would I do that? First, Cal is a long-time client and the child of good friends, former classmates, neighbors, and the grandson of my parent's neighbors and friends. Second, this is a confidential juvenile court proceeding. As such, anything said in the proceedings are confidential. ORS 419B. 035. In other words, how can there be an improper disclosure in secret proceedings?

Second, any statement I made was in response to the Court's inquiry. A lawyer is required to be truthful to the court, so that was nothing else I could do.

Third, the disclosure is available by the court's order in the expungement proceedings.

Evidence:

None indicated.

3. Did Paulson violate DR 1-103(C) by failing to "... respond fully to OSB's inquiries".

Oregon State Bar Allegations:

The OSB alleges that I failed to provide substantive responses to Hick's *numerous* letters, and failed, on multiple occasions to respond to specific questions. This required the Bar to expend additional time and resources in order to complete the investigation of Dascher's complaint.

Evidence:

The OSB supplies a series of letters between the Bar and me beginning in March 19, 2003 and ending in March 18, 2005.

As indicate above, each letter identified was responded to by me with substance in Exhibits 34, 114-119, 108, 120, 123, 126, 127 and 128.

Also note that I sought to meet with Ms. Hicks, Jeff Sapiro, and Karen Garst to review these matters and we met on October 27, 2003. There are detailed notes from this meeting. My notes are Exhibit 111 and Ms. Garsts are 112. The purpose of this meeting was to convey to Bar staff leadership how such spurious complaints and time consuming responses impact a small lawyer. (Exhibit 108-114) Bar staff leadership was not and is not interested. The Oregon State Bar Disciplinary Counsel's office has seventeen lawyers with a budget of 1.7 million. Each of their

lawyers has a case load of about 12 pending cases. In addition, they have a staff investigator.

AFFIRMATIVE DEFENSES

Laches and Statute of Limitations – The OSB advises this panel that *In re Lenske* stands for the proposition that these defenses are not available in disciplinary cases. Not so. First, the citation states as follows in *Lenske*:

> "The materiality of the inconsistent statements need not be proved in such a proceeding. (Cases cited) The statute of limitations and laches are not defenses (to perjury) citing perjury statute regarding public officials, ORS 162.075 *In re Lenske* at 1270

Second, the statute cited in support of that proposition *In re Lenske* at 1262, ORS 9.480(1) has been amended and has nothing to do with laches nor statutes of limitations. Third, and most important of all, the Oregon State Bar House of Delegates passed a resolution in September, 2001 requiring that the Bar study the issues of delay. (Exhibit 136) The Bar has steadfastly refused to do so notwithstanding the devastating effects an ongoing bar complaint has on a sole practitioner lawyer.

2. Delay and Prejudice – This initial complaint by Cal Wiren is dated January 3, 2002. The formal complaint issued on April 8, 2005. I would be reinstated to the Oregon State Bar Board of Governors by June, 2005 where this case not issued the same day the previous trial panel issued their opinion – you guessed it, on April 8, 2005. BR 11.1 applies. In addition, having a spurious bar complaint pending against one takes a substantial toll on the attorney's staff and income.

3. Selective enforcement – It is clear that the Oregon State Bar has singled out me because I made a Bar complaint about Mr. Sapiro in 2001 for delaying an investigation for a year. I also participated in the Disciplinary Task Force process and sought to ameliorate the disciplinary process. Our Bar leaders do not want to address the concerns of the 12,000 lawyers who are their members. Karen Garst's E-mail to Nena Cook, the Oregon State Bar President on January 13, 2004 stating **"I am going to talk to Jeff (Sapiro) about a special investigator in Lauren's cases."** says it all. (Exhibit 114)

4. Prosecutorial misconduct – The disciplinary task force process to major changes in the disciplinary process including the Client Assistance Office which took away intake from Jeff Sapiro. Another change was mediation pursuant to Bar Rule 4.9. Jeff Sapiro steadfastly refuses to use the mediation process including in this case. (Exhibit 137)

5. Unconstitutional – Oregon's disciplinary process is unconstitutional because it denies due process and equal protection of the laws under the First and Fourteenth Amendments to the United States Constitution. Here is why.

- Jeff Sapiro is the Disciplinary Counsel and reports to Karen Garst the Executive Director of the Oregon State Bar.
- The State Professional Responsibility Board (SPRB) is the disciplinary grand jury is controlled by the Board of Governors according to Oregon Law. ORS 9.532 However, the Board of Governors has appointed Disciplinary Counsel as the lawyer for the SPRB. (Exhibit 138)

- Under the Bar Rule 2.6(g) complaints against Disciplinary Counsel for misconduct are required to be referred to the Chair of the SPRB for investigation and a determination of probable cause. (Exhibits 115-122) *Thus, allegations of misconduct against disciplinary counsel in Oregon are investigated by the disciplinary counsel's own client, the SPRB.*

- Under Oregon law, the *Disciplinary Board* (the judges in the Oregon State Bar's disciplinary process) is required to be appointed by the Oregon Supreme Court. ORS 9.534 That does not really happen. It is OSB's Board of Governors who actually make the appointments. (Exhibit 139) I attended the Oregon State Bar Board of Governors Appointments Committee meeting on September 29, 2005 at the Salem Convention Center. Jeff Sapiro, the Oregon State Bar Disciplinary Counsel was in attendance and was making recommendations to the OSB Board of Governors as to who should be appointed, their terms extended or not reappointed. *Thus, the prosecutor has a voice in who is appointed as a judge in Oregon's Disciplinary Process.* No members of the Oregon State Bar have a voice in who is appointed as judges in Oregon's Disciplinary Process. The Oregon Supreme Court has unconstitutionally delegated a nondelegable duty which results in an unconstitutional denial of equal protection and due process of law.

CONCLUSION

The disciplinary process in Oregon has been broken for a long time. Jim Hennings single handedly called upon OSB's House of Delegates to take a fresh new look at the

entire process in 2001. OSB's leadership at the time, Karen Garst, George Riemer, Jeff Sapiro and Ed Harnden as President were against Mr. Henning's proposal. The House of Delegates won and the Disciplinary Task Force made recommendations for ameliorative changes in 2002. Karen Garst and Bill Carter convinced the Task Force to leave Jeff Sapiro in charge of intake. The minority on the Task Force led by Linda Eyerman and Marc Blackman proposed a minority-report option to take intake away from Jeff Sapiro. The house of Delegates voted for the minority option and a new CAO was formed along with the ameliatory changes of diversion and mediation.

There are those among us that are into punishment of errant lawyers. There are those among us who are into rehabilitation as opposed to punishment.

I did nothing wrong here at all even though Martha Hicks searched under every rock to make out a case against me. She then handed off that unfortunate duty to others.

EPILOGUE IS PROLOGUE

This whole case started with Cal Wiren venting in his letter to the Oregon State Bar in January of 2002. That entire claim was dismissed by Mary Cooper of the Oregon State Bar's Disciplinary Counsel's Office in her thoughtful letter to him dated January 24, 2002. (Exhibit 103) Stripped of the unfortunate search by Martha Hicks from March 19, 2003 onwards, what actually remains here is nothing more than Cal Wiren's initial venting in 2002 that was dismissed by Mary Cooper in 2002.

DATED this 12th day of December, 2005.

/s/ Lauren Paulson
LAUREN PAULSON, OSB #73232
Member

Oregon Revised Statute

9.534 Disciplinary board; procedure before board; oaths; subpoenas; hearing; record. (1) The Supreme Court shall appoint a disciplinary board to hear formal charges against members of the bar. The composition and authority of, and procedure before, the disciplinary board or panels thereof shall be as provided in the rules of procedure.

PAULSON'S DISCIPLINARY RECORD

DATE	EVENT	REMARKS
1973	Paulson admitted to the Oregon State Bar	
1973 to 1989	Paulson has **no** disciplinary complaints	Paulson is corporate counsel for various insurance companies working in Oregon, Tenn., Ohio, New Jersey and New York.
1990 to 2000	Paulson has 22 disciplinary complaints **none** of which result in a formal complaint by the SPRB	Paulson is in private practice, first with a small firm then as solo practitioner.
2000	Paulson refuses a letter of admonition on an ethical allegation that a single $67.50 charge was an 'excessive fee'.	See Exhibit 1, Tab 67, the Ring matter.
2001	Paulson, as House of Delegates member, votes for Disciplinary Task Force.	See Exhibit 1, Tab 1

2001	Bar proceeds with prosecution of the Ring matter	
2001	Paulson files complaint against Sapiro on Gensman matter	
2002	SPRB directs prosecution of Gensman matter against Paulson	
2003	Paulson begins BOG term	
2004	Garst directs Sapiro to put a Special Investigator on Paulson's disciplinary cases. Paulson suspended by Bylaw 18.6	
2005	SPRB directs prosecution of Dascher matter against Paulson	
2005	SPRB directs prosecution of Brady – Aiello matter against Paulson	
2006	SPRB directs prosecution of Rubeo matter against Paulson	

September 11, 2003

Letters
Oregon State Bar Bulletin
5200 S.W. Meadows Road
Lake Oswego, Oregon 97035

Re: Letters

The Trial Panel has spoken. The Supreme Court has spoken. It is with some measure of pride that I join the ranks of the 'disciplined' in the Oregon State Bar.

My offense was charging a client $67.50 to respond to an unfounded bar complaint. That charge was recently deemed 'illegal' and 'excessive' by our Oregon Supreme Court under DR 2-106 Fees for Legal Services.

But here is the "rest of the story" the Oregon Supreme Court decided to leave out of their decision:

1. I had won the trial for the client.

2. I had voluntarily and altruistically reduced my fee by $4,000 *prior* to any dispute with the client. I did this because the trial had been bifurcated by the court over two days, a month apart, and I just felt sorry for the client having to pay for trial preparation twice.

3. I withdrew from the client's case because the client did not pay my 'reduced', bill after the case was appealed. I filed for an extension of time with the Court of Appeals and furnished the exhibits to the court without charge. After the client still would not pay my bill, I discounted my fee even further including the $67.50 charge that was deemed excessive.

4. I was charged with charging an 'excessive' fee by the Oregon State Bar. The Trial Panel (made up of two

prosecutors) found me guilty of charging an 'illegal' fee (a fee in violation of a statute), of which I had *not* been charged. The Oregon Supreme Court decided not to address this issue.

5. The Trial Panel is supposed to render their opinion within 21 days of the trial. This panel, despite no complications, took four times the allotted time to render their decision. This was okay with the Oregon Supreme Court.

So now I join the exalted ranks of the Oregon lawyers who have been publicly ridiculed, tainted, and disgraced. So why do I feel so good about it? Because I finally got the Oregon Supreme Court to take one of my cases.

Lauren Paulson

House of Delegates

Resolution No. 1

7. Creation of Bar Disciplinary Process Study (Delegate Resolution No. 1)

Whereas, the House of Delegates of the Oregon State Bar has the duty in annual session to consider and debate matters of concern to the membership of the Oregon State Bar and to provide learned advice and direction on matters concerning the practice of law in the state of Oregon.

Whereas, the House of Delegates of the Oregon State Bar believes that there exists substantial confusion relating to the purposes, priorities, processes, and allocation of authority in the present system of Bar Discipline.

Resolved, that the House of Delegates requests and instructs the Board of Governors of the Oregon State Bar:

1. To establish and supervise a complete study of the State Bar disciplinary system;
2. To report at the 2002 Oregon State Bar House of Delegates meeting on the results of the study; and
3. To make recommendations to the 2002 Oregon State Bar House of Delegates meeting for changes to present processes, rules, and statutes as needed.

This study shall provide for input from the members of the Oregon State Bar and other interested parties within each region of the Oregon State Bar and if possible, and with the assistance of local county bar associations, within each county of the state of Oregon.

This study shall be broad in scope but will specifically look at the following matters:

1. The specific purposes and goals of the disciplinary process.
2. The scope and limits of the disciplinary process.
3. The appropriate speed of the disciplinary process.
4. The appropriate rules of procedure to ensure an equitable process fair to complainants and lawyers.
5. The process of setting enforcement priorities.
6. The clear establishment of authority throughout the process.
7. The appropriate use of volunteer members of the Oregon State Bar or paid staff.
8. Appropriate methods, other than the present adversarial case law system, for the bar to debate, develop ethical rules, and educate attorneys on those rules.
9. Whether the goals and processes should be presented to and approved by the House of Delegates.

Background

Since 1987 the Oregon State Bar has been involved in nine separate reviews of the Disciplinary process.

1987 ABA evaluation of Oregon Disciplinary system

1990 Disciplinary Rules and Procedures Committee response to the ABA evaluation

1993 Board of Governors Adjudication of Disciplinary Cases Task Force

1994 Disciplinary Rules and Procedures Committee review of ABA McKay Commission

1994 Proposal for discipline diversion proposal to Oregon Supreme Court

1995 Board of Governors task force to review State Professional Responsibility Board

1996 Joint meeting of Oregon Supreme Court, State Professional Responsibility Board and Board of Governors regarding key goal of disciplinary process

2001 Adoption of Amendments of Bar Rules of Procedure related to disciplinary rules

2001 Board of Governors limited Disciplinary Work Group (in progress)

During the same time, there have been increased calls for more bar staff (to handle the cases), questions concerning the use of volunteer bar members in the disciplinary process, requests for more stringent rules related to cooperation with Bar requests for information, questions concerning the reliance that can be placed on ethical advice from the Oregon State Bar, and a major case (Gatti), which has lead to the creation of special task forces and an emergency meeting of the House of Delegates. Despite all of these activities, the disciplinary process remains unknown by the general Bar membership.

There are a multitude of questions ranging from the purposes and limits of the disciplinary process, the certainty of the ethical rules and the process of development of the rules, to the involvement of Bar members in the basic honor of our profession.

This Resolution would require that the Board of Governors create a full review process, hopefully including local Bar Associations and Professional Legal Groups, to study the disciplinary process and forward a report to the

House of Delegates for discussion and the adoption of possible recommendations.

It is time for the House of Delegates to review a full study of Bar discipline and bring the special learning and skills of our profession to debating and then confirming or creating an appropriate, fair, and speedy system. It is time to ensure a just system to guarantee our honor as attorneys and thereby protect the public that has given us special status.

Presenter: James D. Hennings

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

LAUREN PAULSON,

Plaintiff,

V.

WILLIAM CARTER, President of the Oregon State Bar, THE OREGON STATE BAR, KAREN GARST, GEORGE RIEMER, LISA LESAGE, DENNIS RAWLINSON, NENA COOK and JEFF SAPIRO,

Defendants. /

Case No. CV 04 1501 HU

DEPOSITION OF JEFFREY D. SAPIRO

Taken in behalf of the Plaintiff

10 August 2005

–o0o–

* * *

[81] (Recess)

MR. PAULSON: Okay. Back on the record.

BY MR. PAULSON:

Q. I don't have extra copies of this. I'm going to ask you if you recognize it first; and if you do, then I might make it an exhibit. This is a DEF 00284.

A. Yes, I do recognize it.

Q. You've seen that before?

A. Yes.

Q. Okay.

(Marked for identification, Exhibit Number 58)

MR. PAULSON: This is Exhibit 58.

MS. EGGUM: May I see it for a moment, counsel?

MR. PAULSON: (Indicating) You can keep it, Mr. Sapiro, I'm going to ask you a few questions about it.

BY MR. PAULSON:

Q. How did Exhibit 58 come to your attention?

A. I don't remember.

Q. Did Martha Hicks bring it to your attention?

A. She might have. I don't remember.

Q. Do you see at the bottom, the bottom of the second page, the request for mediation?

[82] A. Yes.

Q. Did that occur?

A. Did what occur?

Q. The mediation?

A. No.

Q. Why not?

A. The SPRB declined to mediate.

Q. Did you produce something in writing to them based on Exhibit 58?

A. I don't recall.

Q. Do you present matters to the SPRB that are not in writing?

A. Sometimes.

Q. So this was presented to the SPRB, and you don't know if it was done in writing or not; is that correct?

A. I don't recall what the form it went to the SPRB.

Q. Do you recall what your recommendation was?

A. No.

Q. Have you ever done a mediation in your life?

MS. EGGUM: Object to form. Argumentative, irrelevant.

A. Done a mediation?

[83] BY MR. PAULSON:

Q. Have you ever been involved in a formal mediated session in your life?

MS. EGGUM: In connection with disciplinary cases or otherwise?

MR. PAULSON: Global.

A. Not that I recall.

BY MR. PAULSON:

Q. Ever been through any training sessions on mediation?

A. I may have attended a CLE, but I don't remember.

Q. Do you have anything against mediation of disciplinary issues?

A. In a general sense?

Q. Yes.

A. No.

Q. Do you know how the open records request was processed following the receipt by the Bar of Exhibit 58?

A. My recollection is that Martha Hicks responded to the request, at least with respect to matters within her knowledge. And my recollection is that Karen Garst also sent you a response.

Q. Were you in any way involved with compiling

* * *

[111] communicated to you by letter at some point. Whether it was in response to this or some earlier or later communication, I did respond to you in writing, advising you that I did not agree with your interpretation of the Bar rule.

BY MR. PAULSON:

Q. Do you have something against mediation of disputes with Oregon State Bar members?

A. You've asked me that already today, and I said, no.

Q. Why don't you do it then?

A. I don't make the decision whether to mediate or not, Mr. Paulson.

Q. Who does?

A. The SPRB.

Q. So you're saying that 4.9 requires that?

A. I'm saying that the SPRB speaks for the Bar in terms of disciplinary matters. They have to make a decision as to whether or not to commit the Bar to a mediation. I'm their lawyer. I'm not the decision-maker. They are the decision-maker.

Q. Well, let me put it a different way. Have you ever recommended to them that they mediate a dispute, as their lawyer?

A. Mr. Paulson, my best recollection is that we [112] have had maybe one or two requests for mediation, total, since the rule was adopted. So if you're asking me whether or not there's this long history of us discussing with the SPRB whether to mediate, there isn't.

Q. I'm asking you for a single piece of paper that exists anywhere, where you have ever recommended to the SPRB that they mediate a dispute from an Oregon State Bar member?

A. Any recommendation I would have made to the SPRB about a particular case would be privileged communication.

MS. EGGUM: Counsel, I can take a short break?

MR. PAULSON: Sure.

BY MR. PAULSON:

Q. Mr. Sapiro, you're familiar with in re Leisure I, the matter involving, I believe it was, the PLC fees that were owed?

MS. EGGUM: Counsel, I want a continuing objection to the relevancy of that line of inquiry.

MR. PAULSON: Yes.

BY MR. PAULSON:

Q. Do you know what I'm talking about?

A. Yes, I do.

* * *

OREGON STATE BAR MEMBERSHIP SURVEY

> 25.6% had been named in a disciplinary complaint within last 5 years. Of those only 3.9% were charged formally.

> 11.2% had filed a complaint against another lawyer.

> 38.8% do not have good understanding of how the disciplinary process works.

> 16.3% thought the existing disciplinary system was very effective in enforcing the Code of Professional Responsibility.

> 31.8% do not believe the existing disciplinary system provides a lawyer with a full and fair opportunity to defend against a disciplinary complaint.

> 47.1% feel there is bias in the disciplinary system. Of those 20.4% believe it is due to the subject matter of lawyer's practice, 31.5% think it is because of the size of the lawyer's practice.

> 39.8% think the process is too slow. 30.7 think the process is more adversarial than it needs to be. 59.2% thought there should be an ombudsman program to help the parties resolve the problem separate and apart from the disciplinary process.

LETTERS TO THE DISCIPLINARY TASK FORCE

1. Wendie Kellington said that although she had no experience with the disciplinary process herself: Lawyers should be able to rely on bar advice; that the bar should take into account the realities of private practice before they go after lawyers with its tremendous resources; I think that 'technical' violation of disciplinary rules – that don't hurt anyone – should go nowhere; that I perceive the bar disciplinarians sometimes approach lawyers as if they

[sic] inherently troublesome and that the public needs strict unforgiving rules to 'protect the public' from such rascals – that there should be room for honest mistakes; that the rules should be clear and then only regulate and respond to genuine abuses. I think the bar over regulates lawyers. I perceive that the bar is more forgiving of lawyers in large firms and in government practice than those in small firms or solos. I do not believe that there is such a huge proportion of solos who are bad; rather I think the bar finds it easier to make examples of them. I know a person who went through the disciplinary ringer. I think bar disciplinarians need to remember that the vast majority of lawyers are people doing the very best job they can for their clients in a very contentious and difficult world. 12/12/01

2. Robert E. Thomas, III – I do think we need swifter process on the complaints made. 12/12/01

3. Steve Berne – I have become increasingly concerned about what might be unfair disparity between the discipline given to 'prominent' attorneys versus lesser known attorneys for similar disciplinary violations. 12/12/01

4. Mathew Whitman – I was shocked by the Supreme Court's decision *In re Brandt and Griffith*. Bar advice should be recognized in disciplinary matters.

5. Arin Dunn – Complaints should not be made public unless they result in some form of attorney discipline.

6. Karen Creason – In the area of conflict of interest and other ethical considerations, the right thing is not always readily apparent. I was shocked to learn recently

that the current disciplinary process considers it appropriate to ignore the efforts a person has made to determine the correct behavior. To discipline someone who was in effect led astray by incomprehensible rules and misadvice from the bar seems the height of folly to me.

7. Elizabeth Yeats – lawyers in larger firms seem to receive significantly less onerous sanctions than lawyers in smaller firms. Examples are sanctions imposed against John Davenport and Gary Roberts, both of whom lied to the court.

8. Robert Van Natta – The problem is that the focus has drifted from identifying, and dealing with genuine crook [sic] who are an embarrassment to the profession, and a threat to the public to playing games over hyper technical infractions. I could go on, but I am saddened by the state of affairs of our profession . . .

9. Charlie Williamson – I do not have first hand experience, but I have heard from other lawyers that the 'bedside manner' of certain bar disciplinary staff is not good and may be the root of some of the member concerns. It does seem from the debate at the HOD that some people were concerned more about attitude than substance.

10. J. Thomas Pixton – The speed of the disciplinary process needs to be addressed.

11. Lori Hellis – There should be a better forum for the usual type of complaint – where the client either doesn't like the outcome, or doesn't like the fill. Those types of baseless complaints take up tremendous time for the bar and for the attorney.

12. Thomas Andrews Prof. There is a Washington State task force 2000 get a copy.

13. Peter Mozena – Lawyers tend to be harder on themselves than any other profession. The claimant should have to pay a filing fee to weed frivolous complaints.

14. James Kirk – I have heard the normal rumors, that the system takes too long and favors big firms.

15. Thomas Elden (DOJ) He has filed many disciplinary complaints from his position as consumer fraud. Attorney discipline seems uneven, sometimes delayed, and usually too narrowly focused on those who commit discrete acts of financial mismanagement or inattention to a case, rather than 'processes' of unethical conduct. In re Brandt is an example of uneven justice. The Bar found four violations, the majority of the Supreme Court three, another justice one, another justice none. We should divert small technical cases quickly out of the system.

16. Tom Cooney – It takes too long to bring the matter to conclusion and there is a need for expedited mediation, with authority to settle the matter at that time.

17. Akin Blitz – The process is too slow and nonresponsive. Stop the process of trading submissions from complainant and lawyer until both parties get tired of the exchanges.

18. I have had one bar complaint filed against me – not by a client – but by an attorney who was fired by an attorney who was fired by my client. The ordeal that the Bar put me through was incredibly long, painful and expensive. I am still stunned at the process.

19. Joan Weil – Having recently been subject [sic] to a wrenching disciplinary complaint, I am outraged that someone who comes in with the most outrageous fabricated

lies can drag this process out for months and has the right to continue this harassment for years. Despite the fact that there was not a shred of evidence, *the process took 8 months* and cost me many thousands of dollars. What is there to protect a totally innocent lawyer from harassment? Since we, as members of the Bar cannot file charges of libel against our complainants, we need more protection and a speedier resolution.

20. Virginia Ross – After providing information to the OSB if took over a year for a real investigation. (Fred Cornilles Trust Firm)

21. Richard Mickelson – The present system is unbelievably slow. There must be a way to speed up the process to protect the rights of all concerned.

22. Rebecca s. Tuazon – The disciplinary process is far too slow. I am aware of several cases, one currently pending, that have taken 3+ years to be resolved. I understand there are no speedy trial type safeguards required by the constitution but certainly there must be more statutory safeguards built in for the public's sake as well as the accused lawyer.

23. Ronald Marek – I believe the Bar spends too much of its time dealing with negligence issues rather than intentional wrongdoing. Lawyers are hired to make judgments on an hourly basis. I believe the OSB has a reputation for overly aggressive behavior in some situations.

24. Norman Frink – The disciplinary system is in need of major change. It is so complex and cumbersome that it makes if hard to discipline lawyers who need it and

even harder to do in a timely manner. Most prosecutors in this state think the system has an anti-prosecution bias.

25. Michael Horton – One of the weaknesses in the current system is the length of time an investigation takes before a final decision is made. As President of the Malheur County Bar Association, many of my constituents have expressed a concern that the disciplinary staff are focusing more on technical violations of our ethics code rather than putting more emphasis on the prosecution of those attorneys who have blatantly violated our code of ethics and have caused significant harm to their clients.

26. Thomas A. Davis – Whatever system is in place requires some type of early review and rejection of those claims that obviously should not go forward. *In re Brandt and Griffin* leaves OSB members in a position of not knowing how to avoid sanction.

27. James D. Vick – I have been disgusted with the Bar's disciplinary process for a number of years. The system is highly political, whether the Bar wants to admit it or not. Big fish are sometimes overlooked, while the small fish are prosecuted vigorously. (Example given pertaining to Bob Burt and Charles Burt). It also appears to me the Bar spends exceeding amounts of time on complaints by disgruntled clients which are clearly made by weirdos and kooks which have no substantial ethical content. I cannot tell you how many hours we have spent responding to ridiculous complaints where the Bar should have initially just rejected the complainant out-of-hand. It seems to me the Bar counsel should have the ability to sort out what appears to be real ethics violations from the large number of persons who are just simply mad at their

attorney and wishing to harass them by bringing a claim with the bar. This is an obviously broken system.

28. Ray Babb – I think the disciplinary committee should make a better evaluation of the situation before putting the attorney and complainant through several rounds of correspondence. I have always liked Jeff, but something has gone terribly wrong in the last two or three years.

29. Frederic E. Cann – I suggest you make a special effort to contact lawyers who have been subject to the disciplinary process including those who have been found not liable to see what they have found good and bad about the process of lawyer discipline.

30. Paul J. Speck – I personally experienced the inability to communicate and frustration of not knowing what was happening, which is inherent in the existing system. I had no opportunity to speak to anybody to explain my side of the story. At present, too much depends upon the interpretation of the individual doing the investigating and their predisposition towards either the persons involved or the issue at hand.

31. William E. Love – The process is too slow. My experience is that generally the essential facts are known within 30 to 60 days after the issue is raised. In a most recent case with which I am familiar, the case was resolved some 3-4 years after the event (and after) the facts were established. All parties want to get the matter resolved, so it is not necessary to hit the critical issue head on in an adversarial mode.

32. Paul M. Ferder – The cases of In re Brandt and In re Griffith has caused a lot of dissension with the

members of the OSB. I was privy to the early stages of the cases and after reading the Bar opinion, I could not believe it was the same case. It has been echoed in the back rooms of all law offices for years that the Bar is not our friend, and neither is the Supreme Court. It is now being talked about openly and, hopefully, some credibility will be restored to both institutions.

33. Vernon Cleaves – To have a disciplinary charge or complaint filed against a member is, regardless of the merits, a stressful and time-consuming experiences [sic].

34. Hon. Elizabeth Welch – What is unacceptable lawyer performance? I feel like I am making up the rules as I go along.

35. Laurence Thorp – I have served as a member of the Disciplinary Board, the SPRB, LPRC, Ethics Committee, as both plaintiff's and defense counsel in disciplinary proceedings. I also served on the Model rules Committee. As a member I supported retention of the Rules over Model Rules because the rules were generally known and understood by the Bar and there was a body of case law and ethics opinions interpreting them.

However, since then I have seen Disciplinary Counsel's Office grow dramatically and an inordinate amount of time and expense spent on what I consider minor technical violations. An additional part of the problem, has been the unrealistic application of the rules and sanctions imposed by the Supreme Court.

In the last thirty days I sat through two disciplinary hearings as a member of the trial panel. At the end of both hearings, the lay member of the panel indicated he could not understand why the Bar was prosecuting either case

since each dealt with relatively minor technical violations, none of which merited prosecution.

I have come to the conclusion that the system needs a major overhaul. George Riemer suggested to me many years ago that the disciplinary rules should simply prohibit lying, cheating and stealing.

Suggestions:

1. Reduce the bureaucracy, delay and expense of the current system.

2. Reduce or eliminate prosecuting cases where there is no substantial adverse consequence to an attorney's good faith violation of an ethics rule.

3. The Bar staff generally has no appreciation of the practice of law as many, if not most members of the Disciplinary Counsel's office have not engaged in private practice.

4. Dramatically reduce the number and complexity of disciplinary rules.

5. Attempt to clarify the distinction between malpractice and misconduct.

Bar staff has tremendous influence over the members of the SERB. Because of the limited experience most have in the private practice of law, I believe the staff often encourages prosecution of cases which involve only minor to technical violations.

36. Hon. Robert S. Gardner – The process is not working well for certain kinds of cases. The system is not respected by our local attorneys who perceive it as a process that one gets involved in because another attorney was the type of attorney who reports things to the bar, and

that once a bar disciplinary action is instituted, the process is far too insensitive and emotionally and financially draining. The three cases of which I am familiar all involve attorneys that are regarded as highly ethical. One the Bar found a violation where we knew differently. Another attorney accepted the sanction rather than face the process with its very significant impacts on money, time and emotions. The third soured a relationship over the duty to report. There is a certain randomness that undermines the credibility of the system. The bar procedure is very formal and rigid and it is difficult to find someone who can make a reasonably quick and authoritive decision. The end result is that there tends to be lots of delay and uncertainty. Someone from the Bar needs to have the authority to get those kinds of cases resolved in a reasonable way.

37. David Jensen – I have served as counsel defending 10 lawyers. These cases have dragged on far, far too long. If the Oregon Supreme Court and the Oregon United States District Court require trials to be completed with one year of filing then so should the Bar. There is a lack of judgment by the Bar in determining which cases should be tried as opposed to plea bargained.

38. Frank C. Roberts – I strongly believe there is bias is a factor in the process. Because the complainant was a judge, the Bar counsel took an extremely adversarial attitude and presented a distorted view of my actions to the trial panel. The disciplinary system is absolutely necessary, but is not the place to take up personal vendettas against anyone. My case took over four years of living under a shadow. I feel that by using delaying tactics and keeping the matter open as long as possible contributes to damage to the attorney's reputation and livelihood, even if

at the end of the process no guilt is found and no sanctions assessed. (I have) hope that something might be done to correct the inequities we suffer under the current disciplinary system.

39. K.D. Brand – The narrow thinking of one (disciplinary) staff attorney can cause considerable damage to an accused's reputation. In my case, Assistant Disciplinary Counsel submitted the matter to SERB. **before** completing her investigation. The SERB. recommended an admonition. It appeared that this action was based on Disciplinary Counsel's belief that she could get 'one quick notch in the handle of the gun'. I would not accept the admonition. Upon taking of depositions in preparation for the trial panel, the matter was resubmitted to SERB. and the matter dismissed. If there was no new evidence or legal authority from what Disciplinary Counsel had before, why did we have to go through the expensive process both for the Bar and me? This case took two years to resolve.

40. Joseph C. Arellano – I believe the Bar's disciplinary office should have a goal of resolving each disciplinary complaint within a certain period of time which is ma(d)e known to both the accused lawyer and the complainant. Oftentimes there is frustration and anxiety caused by the perception that the Bar's disciplinary process is a 'Black Hole' in which little is known about the progress or status of an investigation. **I believe the process would benefit from providing time line goals for the disposition of each disciplinary complaint.** (Emphasis supplied)

41. Thomas J. Flaherty – I served on the Clackamas and Washington County LPRC from the 1980's to the 1990's. I served as chair one year. The vast majority of the

ethics complaints sent to us by the OSB for investigation were without merit and were a complete waste of time. The fact that these complaints were without merit had to have been obvious to the bar staff because it quickly became obvious to the LPRC that the cases were without merit. Most of the complaints never should have been sent to us in the first place. The OSB had a vendetta against Marvin Bowen. In my opinion OSB ethics staff picks on sole practitioners and small firms because they are easy targets.

42. Paul Levy – My 20 year practice is criminal defense. Over the years I have had many complaints and I am proud to say that all of them have been dismissed, until lately. The bar counsel on my recent case had a different view of their responsibility than that of a colleague's case with a different bar counsel. In my colleague's case, the complainant was advised there was no jurisdiction on an issue of the quality of their representation and the case against him was dismissed. In my case bar counsel wanted copies of my motions and the court rulings on them. Even though my handling of the matter had been reviewed in the appellate courts, this bar counsel was going to review the matter again on this ten-year-old matter. This necessitated my hiring of an attorney causing great expense and stress. Eventually the matter was dismissed. I question why my conduct was subjected to such scrutiny when the story provided by the complainant was so clearly fabricated. I was repeatedly made to be some unreliable shyster. I have another and even more egregious story to tell, but it isn't done yet. Bar counsel appears to be attempting to make new law.

43. Thomas V. Bryant – Why does it take nearly 9 years to resolve a case against me. In my opinion the bar

disciplinary procedures should be carefully reviewed, to focus on separating that which is clearly detrimental to the interests of the clients from that which is technically at fault. These cases should be treated differently from where an attorney takes off to Mexico with his clients trust fund!

44. Charles N. Isaak – The Oregon State Bar Disciplinary process is completely out of control. It needs extensive revisions to make it fair and equitable to everyone. The complaint against me was dropped. The financial costs to me and my wife are estimated at $150,000 of my time, damage to my wife's health, damage to my reputation, etc., etc. 5/2/02

45. Peter Jarvis – My clients often feel that LPRC members may have it in for them. The frequency with which bar counsel reject LPRC contentions and the frequency with which LPRC investigations make mistakes or overlook key issues would undercut anyone's confidence in the system. Bar counsel seem to me all to frequently to come up with new and hitherto unadvanced theories about which bar members only learn after a trial panel or the supreme court issues a decision. In my view, this is unfair. 5/3/02

46. Charlie R. Williamson – An attorney friend advised me of his concerns about the State Bar Disciplinary Counsel's office. He felt the Disciplinary Counsel took their jobs far too seriously and prosecuted minor matters that could be settled. The reporting attorney wished not to be identified for 'political' reasons. The particular matter involved Paul Flannery. This decision would seem to lend some weight to the argument that the Bar Disciplinary

Counsel may be too zealous in the prosecution (or persecution) of attorneys.

LAUREN PAULSON
ATTORNEY AT LAW

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ALOHA, OREGON 97007
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e-mail: ljpaulson@ worldnet.att.net

[Name Omitted In Printing]

MEMORANDUM

to: Oregon State Bar Board of Governors
from: Lauren Paulson
subject: Discipline
date: September 2, 2004

ACTION RECOMMENDED

The Board of Governors should appoint a task force to address two issues the Disciplinary Task Force did not address in its Report of 2002 to the House of Delegates. Two issues *not* addressed by the Task Force were:

- ☐ The appropriate speed of the disciplinary process
- ☐ Whether or not the disciplinary process is "biased"

The 2001 *HOD* resolution asked that these two issues be examined along with the others, but the Task Force did not address these issues directly.

DISCUSSION

The Oregon State Bar House of Delegates passed a resolution at its meeting in September, 2001 directing the

Board of Governors to establish and supervise a comprehensive study of the Oregon State Bar disciplinary system. The Disciplinary System Task Force rendered their report in July, 2002 and the HOD adopted many of their recommendations in the HOD meeting in October, 2002. The final changes were made in 2003 including the adoption of a Client Assistance Program, diversion, mediation and appellate procedures.

The Resolution passed in September of 2001 directed that the study be broad in scope and included nine study areas. *The two most consistent complaints heard by the Task Force were*:

1. The disciplinary process is too slow.
2. The disciplinary process is (or is perceived, to be) "biased".

DELAY - Bar Rules of Procedure: There are no written time requirements in the Oregon State Bar Rules of Procedure for Disciplinary Counsel to do anything except send the initial Complaint to the OSB Member within 14 days of determination that there is an arguable complaint of misconduct. There are multiple time constraints on all the other participants in the process in these rules.

DELAY - OSB Program Measures: There are aspirational standards, but no written policies regarding the appropriate speed for the disciplinary process.

DELAY and BIAS - OSB Member Survey (2002): *39.8%* of the Oregon State Bar membership reported that the disciplinary process is too slow. *47.1%* believed there is bias in the disciplinary system.

DELAY - Outside Reports: The American Bar Association 2000 Survey on Lawyer Discipline Systems reported that the Oregon State Bar received an **F** for promptness even though the OSB's disciplinary program is rated third in the nation overall in a report compiled by HALT. They reported it takes about a year and a half for the Oregon State Bar to file formal charges against an attorney after a grievance is received.

DELAY - Case Law: In at least two reported cases the Oregon Supreme Court has noted delay by the Oregon State Bar in disciplinary proceedings. *In Re Flannery* (2002) and *In Re Lawrence* (2001). In the latter case, "The Bar conced(ed) that it is responsible for the long delay in (the) proceeding." *Lawrence* at 1085. In the former, the delay by the Bar became a mitigating factor.

Back up information is available for the asking by your loyal BOG member, Lauren Paulson. (503) 591-1819, fax (503) 649-2892 or E-mail ljpaulson@worldnet.att.net

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OREGON
STATE BAR
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May 2, 2006

Susan G. Bischoff, Esq.
Gresham City Attorney's Office
Gresham City Hall
1333 N.W. Eastman Parkway
Gresham, OR 97030

Recast Nos. 05-187 and 06-05 – Lauren J. Paulson

Dear Ms. Bischoff:

This letter is in response to the Accused's letter of April 20, 2006, received by this office on April 24, 2006, challenging the trial panel appointed to consider this matter. The Accused's challenge should be rejected because the factual basis for his challenge is inaccurate and his objection is improper.

ORS 9.534(1) requires the Oregon Supreme Court to appoint the members of the Disciplinary Board. The process of appointing members to the Disciplinary Board complies with that mandate. Initially, lawyers and members of the public volunteer to participate on the Disciplinary Board. The list of nominees is sent to the court with a letter stating that the Board of Governors has approved the list (Ex. 1). The court then considers the list and makes the appointments. I enclose the court's orders

appointing Mr. Levine and Mr. Atwood (September 22, 2004), and Mr. Kosokoff (December 7, 2005) (Ex. 2, 3). Contrary to the Accused's assertion, the Board of Governors did not appoint the members of the Disciplinary Board.

Regarding his second point, the Accused is correct that Disciplinary Counsel Jeffrey Sapiro was in attendance at the October 1, 2005, meeting when the Board of Governors considered the 2006 list of nominees for the Disciplinary Board. However, the Accused is incorrect when he asserts that Mr. Sapiro participated in the selection. Mr. Sapiro has no role in which lawyers and members of the public volunteer to participate on the Disciplinary Board. He also does not sit on the Board of Governors and therefore has no vote when the Board considers the list of nominees.

As provided in ORS 9.010(1) the Bar is subject to the public meetings laws of ORS 192.610 et seq. The portion of the Board of Governors meeting at which time the 2006 list of nominees for the Disciplinary Board was considered was a public meeting and therefore anyone, including Mr. Sapiro, could attend.

The Accused's objection is also improper. BR 2.4(g) provides an accused lawyer with an unlimited number of opportunities to challenge trial panel members for cause as "may arise under the Code of Judicial Conduct or these rules." JR 2-106 sets out the grounds upon which a judge is disqualified from hearing a matter. The Accused has not identified the grounds upon which Mr. Levine, Mr. Atwood or Mr. Kosokoff should be disqualified from hearing this matter. In the absence of specific facts supporting disqualification, the Accused's challenge should be rejected.

As required by ORS 9.534(1), the court appointed all of members of the Disciplinary Board assigned to consider this matter. Contrary to the Accused's assertion, Mr. Sapiro did not generate the list of nominees and did not approve them. In any case, the Accused has not identified why Mr. Levine, Mr. Atwood, or Mr. Kosokoff are disqualified from hearing this matter. The Accused's challenge to the trial panel should be rejected.

Very truly yours,

/s/ Stacy J. Hankin
Stacy J. Hankin
Assistant Disciplinary
Counsel
Extension 347

SJH:rjl
Enclosures
cc: John A. Berge, Esq.
Michael R. Levine, Esq.
Mark Morrell, Esq.
Lauren J. Paulson, Esq.
Disciplinary Board Clerk

Article 18 – Discipline

Section 18.1 – State Professional Responsibility Board

Subsection 18.100 – Duties

The State Professional Responsibility Board ("SPRB") is authorized to exercise its powers and authority pursuant to statute, the rules of procedure and the Bar's bylaws. The SPRB will meet regularly pursuant to the call of the chairperson to consider complaints and other matters within its jurisdiction. The SPRB will receive the counsel and advice of the Office of Disciplinary Counsel of the Bar. Disciplinary Counsel will regularly report to the Board of Governors regarding actions taken by the SPRB. The SPRB may proceed with business if a quorum of five members is present at any meeting and act by a vote of a majority of those present.

Karen Garst

From: Karen Garst

Sent: Tuesday, January 13, 2004 4:03 PM

To: (e) Nena Cook

Subject: RE: Minutes

Thank you!

I just received a copy of a letter from Lauren to Discipline. It's getting pretty bad there too. I am going to talk to Jeff about a special investigator in Lauren's cases.

KG

LAUREN PAULSON
ATTORNEY AT LAW

3980 S.W. 170TH AVE
ALOHA, OREGON 97007
TELEPHONE (503) 591-1819
e-mail: ljpaulson@ worldnet.att.net

November 13, 2001

[Name Omitted In Printing]

Jeffrey D. Sapiro
Disciplinary Counsel
PO Box 1689
Lake Oswego, OR 97035-0889

Re: Case No. 01-100

Dear Mr. Sapiro:

The purpose of this letter is to determine if you neglected a legal matter entrusted to you in violation of DR 6-101B. This matter emanates from a defendant whom my client sued years ago. I wrote to you on July 27, 2001 and asked you what was happening on my case from October of 2000 until June of 2001. Your response did not address that question.

Now there has been another 5 months of delay of which there is no explanation. Recently, I reviewed a disciplinary matter before the Oregon Supreme Court where your department admitted delaying a matter *for two years.*

Please note the enclosed letter from Kay Pulju. As long as I have a disciplinary matter pending against me I can receive no Lawyer Referrals.

First, consider this as a disciplinary complaint.

Second, please provide the information requested in my letter to you of July 27, 2000.

Third, please advise what sort of standards you have for these matters and your department's adherence to those standards for the last five years. Thank your [sic] for your interest and attention to these matters.

Very truly yours,

/s/ Lauren Paulson
Lauren Paulson

cc: Karen Garst
Ed Harnden
Dennis Karnopp
Angel Lopez

BOIVIN, UERLINGS & DIIACONI, P.C.
ATTORNEYS AT LAW
803 MAIN STREET, SUITE 201
KLAMATH FALLS, OREGON 97601-6070
TELEPHONE: (541) 884-8101
FAX: (541) 884-8498

[Name Omitted In Printing]

December 19, 2001

PERSONAL & CONFIDENTIAL

Lauren J. Paulson
Attorney at Law
3980 SW 170th Avenue
Aloha, OR 97007

RE: Complaint of Lauren J. Paulson
against Jeffrey D. Sapiro

Dear Mr. Paulson:

I reviewed the Oregon State Bar's file concerning the complaint you have made against Jeffrey D. Sapiro. After review I have concluded that there is no probable cause to believe that Jeffrey Sapiro committed misconduct in violation of the Professional Code of Responsibility or Oregon Revised Statutes, Chapter 9.

In particular, your allegation relates to neglect of a legal matter entrusted to Mr. Sapiro in violation of DR 6-101(B). I believe that Mr. Sapiro's letter to me dated September 10, 2001, a copy of which was forwarded to you, indicates that the complaint against you is being properly processed in accordance with the rules and regulations established by the Oregon State Bar in the Oregon Supreme Court. I do not believe that Mr. Sapiro neglected this matter. I understand your frustration in the pace with which a review is made by the Oregon State Bar, however, our

committee and others in the process continually work on that system in order to make it flow as smoothly and rapidly as possible.

The mere fact that a particular matter could have been processed more quickly does not equate to a course of negligent conduct. In particular, this is true when, as Mr. Sapiro points out, "unlike lawyers in practice who have some control over the number of client matters they take in, the lawyers in this office have no control over their case load." In summary, I see no basis to believe that Mr. Sapiro participated in a course of neglect in the processing of the complaint made against you.

Since I have determined that probable cause does not exist to believe that misconduct occurred, your complaint against Mr. Sapiro is dismissed, pursuant to Bar Rule 2.5(i)(1).

Very truly yours,

/s/ James R. Uerlings
James R. Uerlings
Chairman
State Professional
Responsibility Board

JRU/jas

cc: George Riemer
Jeffrey D. Sapiro

September 30, 2003

THIS IS YOUR FOURTH newsletter . . . AND OSB CONVENTION REPORT. Region 4 has 987 active lawyers. The ideal ratio of lawyers to each BOG member is 857.

Region 4 Newsletter

BOG Prepares for Annual HOD Meeting

- Charlie Williamson as the President of the OSB reported on the National Conference of Bar Presidents in San Francisco.
- Karen Garst, Executive of the OSB returned from sabbatical. The Executive Director receives an annual evaluation and the current one is underway right now. General membership comments about this evaluation should be sent to BOG member Lisa LeSage.
- George Riemer, OSB's General Counsel recommended that OSB join the National Council of Lawyer Disciplinary Boards, Inc.
- OSB is proposing new Rules of Professional Conduct which tracks closer with the ABA Model Rules. BOG's strategy and parliamentary rules of procedure were planned. Prosecutors are justifiably concerned about being singled out with special rules applicable to government lawyers.
- There is remarkable participation of the OSB in the Oregon Legislature. Charlie Williamson, Bill Carter (OSB President-Elect) and Mark Comstock lead this charge from BOG. Susan Grabe and Bob Oleson do more than any OSB member can imagine on keeping tabs of Bar-related issues. There is an overwhelming amount of work put in on issues ignored by the media. In addition,

the Oregon Law Commission headquartered at Willamette Law School provide the intellectual muscle on sophisticated issues needing attention over a protracted period of time

- The PLF made their annual financial report to the BOG. While the PLF has been buffeted by investment losses similar to other financial sectors, the annual assessment will remain the same. I have a copy of the State of Oregon financial audit of the PLF if anyone is interested. Notably the PLF will be including patent lawyers with mandatory coverage. Other good news is the "safe harbor" of $25,000 is being raised to $75,000. There will be no special underwriting assessment on any claim/legal payment up to $75,000.

- Karen Garst and Charlie Williamson meet with Chief Justice Carson each month. The Disciplinary Board reports to the Supreme Court, *not* the OSB. The next meeting is for the entire BOG to have a joint meeting with the Oregon Supreme Court and the State Professional Responsibility Board in Salem on September 26, 2003. I will report on that meeting in the next newsletter.

CONVENTION REPORT

Dateline Seaside – Seen at the Convention, Court of Appeals Judge Wollheim, Supreme Court inductee, Rives Kistler, Wallace Carson, Hardy Myers, Kevin Mannix and Ted Kulongoski.

BOG members begin the busy week on Thursday morning for the bimonthly BOG business meeting. The convention itself began Thursday afternoon. It was noticed that many of the sections and committees are foregoing

their participation at the convention and their CLE's are sorely missed. There were some very good legislative CLEs of worthy academic proportions, and some were just plain interesting. For example, the State of Oregon successfully sued the owners of the New Carissa and the DOJ attorneys described the process, the shifting sands of litigation and how to use your power point presentations in trial work.

But, the most fun was Thursday night – We had a delightful meal of clams, mussels, skewers, and other good food **on the beach!** There was even a bonfire. There was a blues band including a harmonica player with soul. It was a great idea and a tradition I hope we keep. What is the use of having a trip to the beach if we have to hang out in the buildings all the time?

Friday was punctuated with spectacular weather and abbreviated CLE's. In the lounge was a free demonstration of Casemaker (see WESTLAW-type) that has its kickoff this month. It is now available for all members now as part of your bar dues, so there it is. The evening dinner was a variety show of OSB members and other affiliated talent. Some were brilliant others belonged on the gong show. The food was predictable. Overall, it was a convivial evening. Mike Schmidt came through with his Aloha Bar Association beach bonfire and the windless summer-like evening gave way to purloined wine to the rhythm of glowing embers. Then came the big bang!

The Business of the House of Delegates

If you have given up on the bar with all of its rules, requirements, letters, bureaucracy, and other days of discontent, take small heart. One astute observer noticed

that the reduction in people attending the bar convention is in inverse relationship with the number of bar staff. First, I am going to stick up for bar staff. A lot of what they do are thankless jobs requiring dedication, late hours and weekend meetings. Second, I think we have a *long* way to go to where we could be with respect to relating what OSB does to the realities of every day law life.

The House of Delegates is a work in progress. It is also the organization that (is supposed to) really runs the bar. More below.

The business meeting addressed several administrative issues then sucked it up for the main event: the new Disciplinary Rules or (newly *yclept*) Rules of Professional Responsibility. If is interesting to be on the BOG and watch the process. In a way it is an 'US' versus 'THEM' process. But, I do not think I am worthy to judge yet. Delegate Max Rae from Salem is the only OSB member out of the 14,000 regular members that actually read *all* the changes, made thoughtful recommendations *in writing* and bought into the entire process orchestrated by OSB staff member Sylvia Stevens. There were other interested parties (mostly government lawyers) who had specific-vested issues they vouchsafed. There was lively debate of a small group of dedicated OSB members and votes taken. You will learn the new rules shortly after the Oregon Supreme Court passes on the recommended changes. There are some hardy members who felt this was a rush to judgment (and a staff driven desire to be consistent with the ABA Model rules). It is not too late to weigh in on the subject.

One Dedicated Person Can Effect Change

Two years ago Jim Hennings, Director of the Metropolitan Public Defenders Office proposed that our disciplinary process be completely reviewed. Oregon State Bar leadership resisted this concept. It captured the imagination of a large part of HOD and the general membership. The new program went into effect on August 1, 2003 and on September 26, 2003 the revamped disciplinary process was presented to the Oregon Supreme Court. This new program includes a new complaint reporting procedure to the Client Assistance Office for amelioration instead of punishment. If the information produces credible evidence of a disciplinary violation then the matter is referred to the Disciplinary office. There are other positive changes including discretion to explore mediation, diversion and other more soft treatment.

These changes were formulated by the Disciplinary Task Force. This group was truly impressive in the serious and dedicated manner in which they undertook their charge. Working though much of 2002, the recommendations they made were largely adopted intactly. The members of this Task Force were Brad Berry, Marc Blackman, Hon. David Brewer, Win Calkins, Tom Christ, Kelly Doyle, Linda Eyerman, Mary Mertens James, Judy Uherbelau and Bette Worcester. Dennis Karnopp of Bend was the Chair of the Task Force and even entertained the group at his office for one summer meeting that was well attended.

So, through the efforts of one OSB member supplemented by the work of 11 others produced positive change.

Feedback

Ok, enough already from me. As an experiment would you be so kind as to give some feedback:

1. In your opinion, is the membership running the OSB or is the OSB running the membership?

2. Do you feel the Code of Professional Responsibility (Disciplinary Rules) should be completely rewritten or are they generally OK?

3. Do you feel that OSB's disciplinary counsel staff is generally friendly, fair and courteous or not?

I look forward to hearing from each of you. You have my commitment to respond to every contact whether it is to the above request to feedback, input of any sort and, in particular, I welcome gripes.

Lauren Paulson, BOG
Region 4 (Clatsop, Columbia
Tillamook and Washington Counties)

Karen Garst

From: WilCar@aol.com

Sent: Tuesday, October 21, 2003 1:46 PM

To: kgarst@osbar.org; Charlie@kelrun.com

Subject: BOG Issues

Charlie & Karen:

I have set out below a blind copy of the email I have sent to Lauren. If he is going to be the crisis of my presidency, we might as well get on with it.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

LAUREN PAULSON,

Plaintiff,

V.

WILLIAM CARTER, President of the Oregon State Bar, THE OREGON STATE BAR, KAREN GARST, GEORGE RIEMER, LISA LESAGE, DENNIS RAWLINSON, NENA COOK and JEFF SAPIRO,

Defendants. /

Case No. CV 04 1501 HU

DEPOSITION OF JEFFREY D. SAPIRO

Taken in behalf of the Plaintiff

10 August 2005

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* * *

[16] not?

A. Yes.

Q. And what does the SPRB stand for?

A. State Professional Responsibility Board.

Q. What is the SPRB's role in the disciplinary process?

A. They have a general oversight over the investigative and prosecutorial functions in the system.

Q. Going back to the Disciplinary Board, what is your role in juxtaposition to the Disciplinary Board?

A. I appear before – my office appears before the Disciplinary Board much like a lawyer would appear before a judge.

Q. And what is the disciplinary counsel's office role in juxtaposition to the State Professional Responsibility Board?

A. We are counsel to the State Professional Responsibility Board.

Q. What does that mean?

A. We're their lawyers.

Q. How are the various members of the SPRB selected?

A. They are appointed by the Board of

* * *

[37] as the SPRB' lawyer, or do you write to the chair and say "for the purposes of this complaint against me I'm not the lawyer"?

MS. EGGUM: Object to form.

BY MR. PAULSON:

Q. Not your lawyer.

A. I certainly would not counsel the SPRB chair on how to handle a complaint about me. No, I would not do that.

Q. That's not the question. My question is –

A. Then please rephrase it.

Q. My question is, do you advise the chair of the SPRB that for purposes of the complaint against you that you're not their lawyer?

MS. EGGUM: Object to form.

A. I don't make such an explicit statement to the chair of the SPRB, no.

BY MR. PAULSON:

Q. You recall a Bar complaint I made against you in the Gensman matter, correct?

A. I think there was more than one.

Q. My question was, do you recall that?

A. I recall that there was at least one complaint that you made against me, yes.

Q. Do you recall what that complaint was about?

* * *

OREGON STATE BAR 1935

Rules of Procedure

January 1, 2005

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Rule 2.6 Investigations

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(g) Investigation of Complaints Against Disciplinary Counsel, General Counsel or other Bar agents. Complaints of misconduct concerning disciplinary counsel or general counsel of the Oregon State Bar, or complaints that Bar Counsel or members of an LPRC have engaged in misconduct while acting on the Bar's behalf, shall be referred to the chairperson of the State Professional Responsibility Board within seven days of their receipt by the bar.

(1) If the SPRB chairperson determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the parties shall be notified of the dismissal in writing by the SPRB chairperson.

(2) If the SPRB chairperson determines the complaint should be investigated, the SPRB chairperson may appoint a local professional responsibility committee or an investigator of his or her choice to investigate the matter and to report on the matter directly to the SPRB. The same procedure shall, as far as practicable, apply

to the investigation of such complaints as apply to members of the Oregon State Bar generally.

* * *

LAUREN PAULSON
ATTORNEY AT LAW

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ALOHA, OREGON 97007
TELEPHONE (503) 591-1819
e-mail: ljpaulson@worldnet.att.net

[Names Omitted In Printing]

September 10, 2004

Mr. George Reimer
Mr. Jeff Sapiro
Martha Hicks
Oregon State Bar
PO Box 1689
Lake Oswego, Oregon 97035

Re: Mediation and Prosecutorial Vindictiveness

Dear Mr Sapiro, Mr. Reimer and Ms. Hicks:

There can be no doubt the Disciplinary Task Force adopted the concepts of mediation, diversion and the other changes to take the hard edge off the disciplinary process for the membership, yet still provide for the appropriate protection to the public.

On June 28, 2004 I offered to mediate this matter pursuant to BR 4.9. This was rejected by you under the representation that it was a matter for the SPRB even though there is nothing in the plain language of BR 4.9 requiring SPRB approval. In fact, it is clear that SPRB approval is **only** required *after* a trial panel decision – *not before*. We are in the 'before'. Moreover, it is clear that there is a campaign by the certain elements of the Oregon State Bar leadership of harassment, including an attempt to maliciously injure me – all while I am attempting to serve my constituents.

Recently, I came across *In re Roger Rook,* 276 Or 695, 556 P2d 1351 (1976) The trial board made a finding of fact that the prosecutor was motivated by animosity and a desire to punish which were personal to the prosecutor when he refused to plea bargain with one set of attorneys. The Oregon Supreme Court found that a prosecutor is answerable under those circumstances because their acts could deprive persons of constitutional rights. The fact that the district attorney was under no mandatory duty to engage in plea bargaining did not escape a finding that the prosecutor's actions served only to harass or maliciously injure another in violation of DR 7-102(A)(1). Your refusal to mediate in this situation could fall under the same category.

Given the entire circumstances of this case and the facts contained in the Motion to Dismiss, this may be the time to reconsider your decisions in this case.

It is my hope that you will review this letter in the spirit of an 'olive branch' and a view toward righting all of us on our keel.

Please review and advise.

Very truly yours,

/s/ Lauren Paulson
Lauren Paulson

LP:lp